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ABSTRACT

Presented is a collection of 11 papers from a national training institute for special education administrators and others which focused on the major provisions of Public Law 94-142 (Education for All Handicapped Children Act). Papers are divided into three sections: perspectives from Congress and U.S. Office of Education, review and discussion of several major provisions, and implementation considerations and strategies. Entries include the following titles and authors: "Congressional Perspectives and Overview of Key Provisions" (L. Walker); "BEH (Bureau of Education for the Handicapped) Perspectives on P.L. 94-142 and on Regulations Development" (T. Irvin); "Funding and Entitlement Under P.L. 94-142" (R. Rossmiller); "The Least Restrictive Alternative Requirement--Legal and Administrative Considerations" (D. Riley and R. Burgdorf); "Meeting the Full Services Requirement" (J. Gross); "The Individual Education Program Requirement" (S. Torres and H. Self); "Non-discriminatory Testing and Evaluation Systems" (I. Butler); "The National Association of State Directors of Special Education and the Changing Role of State Education Agencies" (W. Schipper, et al.); "Perspective on Needs in Twenty-seven Great Cities" (A. Kowalski); "Organization of Referral and Placement Systems" (D. Sage); and "Urban Schools and P.L. 94-142--One Administrator's Perspective on the Law" (R. Rinaldi). (SBH)

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PERSPECTIVES ON IMPLEMENTATION OF THE "EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975"

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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PREFACE

Public Law 94-142, The Education for All Handicapped Children Act of 1975, is a landmark legislative effort on behalf of equal educational opportunity for the handicapped. Although most of the major rights-related provisions of the law had previously been affirmed by a decade of class action litigation and legislation related to education and treatment of the handicapped, this Act made several important contributions. Among these were: (1) the assembling of the important findings of past court action and litigation in one reference, (2) the affirmative declaration that education of the handicapped is a major public policy arena requiring Federal intervention in the interests of equal educational opportunity, and (3) the provision of additional Federal dollars to assist with improvement of programs for the handicapped.

Although this legislative effort and this specific Act have their detractors, responsible educators and citizens are by and large concerned with development and implementation of a quality local, state, and national delivery system of special instruction and services for the handicapped, and with the elimination of inequalities of opportunity which currently exist. While most see P.L. 94-142 as a potential assist in accomplishing these goals, there are problems related to several aspects of the Act, notably in the areas of funding mechanisms and level of Federal appropriations, in definitions, and in stated priorities. One of the major anticipated problems is the additional cost to states and local districts of establishing and maintaining management systems

necessary to ensure compliance with the myriad of requirements expressed in 94-142, along with the expected typical discrepancy between Congressional authorizations and actual appropriations.

In an effort to assist large city school districts with implementation of this Act, and with improvement of city special education delivery systems, the Council of the Great City Schools, under a grant received from the Bureau of Education for the Handicapped, developed a Technical Assistance Project (the SETAC Project) targeted on implementation of P.L. 94-142. The evolution and activities of this Project are detailed in Anthony Kowalski's contribution in Section C of this book.

This book primarily consists of a collection of papers presented at one of the first major activities of the SETAC Project - a National Training Institute for special education administrators and others held in October of 1976. The primary emphasis or focus of the Institute was to ensure a common understanding of major provisions of 94-142 as a prerequisite to design of more specific implementation strategies and actions.

Papers selected for inclusion in this document are presented in three major sections entitled:

A. "Perspectives from Congress and USOE"

B. "Several Major Provisions: Review and Discussion"

C. "Implementation Considerations and Strategies"

An Editor's Note prefaces each of these major topical sections.

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The work performed herein was done pursuant to a grant from the Bureau of Education for the Handicapped, U.S. Office of Education, Department of Health, Education, and Welfare (G007603441). The opinions expressed herein, however, do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

SECTION A

PERSPECTIVES FROM CONGRESS AND USOE

EDITOR'S NOTE

Developing and interpreting major legislation is hard work, and typically entails a long, multi-year process extending from early research and drafting, to various forms of formal public input, to re-drafting, to committee hearings, to passage, and on to development of related rules and regulations. The United States Congress, Congressional Staff, and the U.S. Office of Education, through its Bureau for Education of the Handicapped (BEH), were the principal actors in development of P.L. 94-142 and of related USOE Rules and Regulations.

Lisa Walker, a professional staff member for Senator Harrison Williams, participated in a major way in the process of developing this legislation, and shares with us in Section A - 1 the perspective of Congress and their intent in developing and legislating P.L. 94-142.

Thomas B. Irvin, the Program/Policy Officer for the Aid to States Branch of BEH discusses the perspective of BEH on several provisions of the law, and details some of the steps in the process of developing regulations related to P.L. 94-142.

SECTION A-1

CONGRESSIONAL PROSPECTIVES AND OVERVIEW OF KEY PROVISIONS

LISA WALKER

As you begin this contribution on implementation of Public Law 94-142, the Education for All Handicapped Children Act, it's useful to set in perspective the background of national policy making in this area at the time that this law was originally conceived, as well as the nature of its development during the period from about 1972 until November, 1975.

The original draft of the Bill, S. 3614, was introduced by Senator Williams in May of 1972. It came against a background of at least one court case, the Pennsylvania Association for Retarded Children litigation where the court declared that all mentally retarded children have a right to an education, and that that education must be provided by the State of Pennsylvania. Following on the heels of this finding came Mills in the District of Columbia, which went a bit further than PARC. The court there stated that all handicapped children have a right to education, that it was up to the local educational agencies, in this case the District of Columbia, to provide for that education and to meet their own Constitutional responsibilities.

This decision also contained a very interesting provision about financing and funding, a statement which is useful in considering implementation. In confronting the question of whether sufficient resources were available for education of all handicapped children within the

District of Columbia, Judge Waddy stated that if there were not enough funds to provide a full and adequate education for all handicapped children--then the educational funding provided for non-handicapped children would have to be reduced until all children were being provided equally adequate education.

A second and equally important factor in the discussion of this legislation was the issue of school finance. In the beginning of the 1970's, in Washington, there was substantial discussion to the Congress and within the states regarding an impending school finance crisis. There was substantial discussion about whether the Federal government ought to consider the issue of school finance and how much more funding to provide, what the Federal role should be, and how assistance should be provided to states and to local educational agencies to offset this school finance crisis.

In 1971, the National Education Finance Project came out with a report, arguing that if the Federal government were to undertake substantially increased funding for education, that there were a number of particular areas that were appropriate for a Federal focus. Those were areas where states and localities have difficulty providing the funding themselves. They singled out the following: Educationally disadvantaged children, education of handicapped children, bilingual training and vocational education.

At the time this Bill was originally introduced on the Senate side by Senator Williams, people believed that school finance legislation would be the next major thrust in education legislation coming down the pike. And it was thought that most of the time between 1971 and 1976 would be spent trying to develop a reasonable school finance package.

While that project grew at that time to be a little bit too complex, the development of this concept and this Bill, where it might be going and what it meant, must be seen in light of the general issue of school finance. At that time, people involved in special education--Senator Williams, Senator Randolph and other members of the Subcommittee on the Handicapped in the Senate and John Brademas and Al Quie in the House--were concerned about a way to ensure that if substantially increased Federal funding should occur at the Federal level, that certainly one substantial area of need was the education of handicapped children.

Finally, this law must be seen as a parallel development with the increase in court cases on right to education in the different states and the passage of comparable state laws. By the time the Congress enacted this law in 1975, more than 45 states had already enacted their own mandatory legislation.

In terms of what this legislation is intended to do and what the perspective of individual Congressmen and Senators is regarding their intent, it's important to note the statement of purpose and to look at the provisions of the law which require certain specific minimum standards for special education for handicapped children. The Congress stated in the statement of purpose that they intended to take up their responsibilities under the Constitution to assure equal protection of the law and that that meant setting down some basic minimum standards which would assure the education of all handicapped children through the United States.

Both the House and Senate reports at the time referred to the number of handicapped children--eight million in the country--and that approximately 1.7 million of these children were not currently being

served and had no educational services at all and that approximately 2.5 million of these children were receiving currently inadequate services.

The House report went further to recognize that the courts had made clear that the right to education for handicapped children is a present right--not one that can wait or that is undercut by insufficient financing or by the fact the individual states or local areas were not providing that education.

The Senate report pointed out that it was the Committee's belief that Congress must take a more active role under its responsibility for assuring equal protection of the law. The report went on to say that local educational agencies should not look to this assistance as general revenues or generalized assistance to mitigate their own responsibilities with respect to the provision of a free, appropriate public education to all handicapped children.

This law does depart from the form of other education law. Other programs such as Impact Aid, Title I, Bilingual Education, and others are laws which do not set forward the same kind of basic minimum standards. The reason the Congress did so in this case was to assure that all children would be provided equal protection and to assure that there were certain basic minimums that were guaranteed to these children and their parents.

First and foremost, these standards were designed to assure that each child received a free, appropriate public education defined to mean special education and related services provided at no cost to the child's parents, and provided in accordance with an individualized education program.

Secondly, the Congress built in provisions to assure both fiscal and programming accountability. These provisions were designed to assure that they would have data and that they would be able to tell, that the Bureau would be able to tell, the states would be able to tell and indeed, that individual local educational agencies would be able to tell that, in fact, each child was receiving an appropriate education designed to meet their needs.

Congressional intent in this law is very clear, perhaps much more direct than most other education laws. And, despite the fact that there has in professional circles been discussion about the complexity and the comprehensiveness of this law, in terms of its basic provisions I believe this law is pretty direct and it's pretty straightforward. I write this knowing, by the way, that Tom Irvin's contribution in Section A - 2 will state that aspects of the law aren't clear, and that they're (BEH) having problems writing regulations. But I do believe that the provisions are clear, and they were intended to be simple and straightforward.

Let me at this point provide a short review of the provisions of the law. I suggest that the law sets out to provide an effective, orderly mechanism by which local educational agencies, regional units, states and the Federal government might work together to assure that each handicapped child has available a free, appropriate public education.

This law does this, I think, not by requiring a number of onerous substantive provisions, but by setting down basic procedural or process requirements. Let me discuss some of these.

It requires that a free, appropriate public education be available to all handicapped children, aged 3 to 18, by September 1, 1978, and requires that all handicapped children, aged 3 to 21 be provided a free, appropriate public education by September 1, 1980.

There's an exception, however, to that provision, which provides that in the age ranges, 3 to 5 and 18 to 21, that where the provision of services is directly inconsistent with state law, or where the state law prohibits or does not expressly authorize the provision of services, those services do not have to be provided.

Second, the law requires that educational services be provided at no cost to a child's parents, regardless of whether the child is served in the local educational agency, in an institution, in a separate classroom, in a residential facility, in-state or out-of-state.

Third, the law specifies the basic procedural protections requiring nondiscriminatory testing, prior notice and an opportunity for a hearing, and the opportunity to evaluate and to review and evaluate all records. These provisions are identical to, or contain only slight clarifications of, those provisions which were contained in Public Law 93-380. In addition, and primary to the assurance of an appropriate education for each handicapped child, the law requires that each child be served in the least restrictive environment--meaning that each child is to be served in the most normalized educational setting which best fits his or her own educational needs.

Fourth, the law provides that each child shall be provided an individualized education program. The Congress saw this requirement not as an onerous paperwork requirement, but more as a dynamic planning and decision making procedure by which all people who are involved in the education of a handicapped child--the parents, the child, the teacher and a representative from the local educational agency--are brought together to make a decision as to what specific needs the child has and what services will be provided, and to agree upon a timetable for providing those services. This provision also underlined a policy adopted by the

Congress two years previous, in 1974, intending to encourage the individualization of instruction for all children in education in the United States. It also requires each state to adopt a policy assuring that every handicapped child has the right to an education designed to meet his or her own individual needs.

Finally, to assure that all children will be provided an appropriate education, mechanisms are built into the law to assure that state and local districts would move in the direction of providing services and would reach the point of serving all handicapped children by September 1, 1978.

The law requires that the state educational agency become the final responsible authority for providing an education for each handicapped child, whether that child is served by an in-state agency, an out-of-state agency, or a noneducational agency, and that the state educational agency would remain responsible regardless of whether another local educational agency or other authority was delivering the direct services.

In terms of funding, this law adopts a new funding formula. This formula is based on the number of handicapped children served and was adopted to provide an incentive to states and to local districts for serving handicapped children because they will be reimbursed on the number of children served.

In addition to this, the law also requires that the money so received from the Federal government be focused on the neediest population with a first level of priority on handicapped children who are unserved and a second level of priority on children with the most severe handicaps.

In the first year of the operation of the new formula, which is Fiscal 1978, beginning October 1, 1977, or a year from now, money will be allocated to a state based on the number of handicapped children being served within the state. Within the state it will be split--50 percent of the money to be retained at the state educational level, to be targeted on children unserved and 50 percent of the money to be passed through automatically to local districts.

In the following year, which is Fiscal 1979, 25 percent of the money remains at the state educational agency level for targeting on unmet needs--perhaps rural districts, areas of low concentration, or whatever happen to be the needs of the state at that point--and 75 percent of the money flows through on an entitlement basis to local educational agencies.

I think it's probably useful at this point for me to discuss the way the local entitlement provision works. There are ways for a state to withhold funds from a local educational agency. In summary, an LEA will get their money based on the number of children they are providing educational services out of the 50 percent or 75 percent LEA share. They may also get additional funding from the state level if the state determines that there are particular needs in that area and money needs to be focused on that local education agency. However, to get any funding at all the LEA must meet certain requirements in order to receive that money. It must be fully eligible under the terms of the law; i.e., providing due process procedures, individualized education programs, et cetera, et cetera. It must apply to the state and it must have an acceptable application.

Secondly, the LEA must be able to generate in dollars, as a result of the number of children it serves, at least $7,500. This provision was adopted to assure that funds would flow through to local agencies in grants large enough to do something with. With that $7,500 you'd be able to buy, for instance, at least part of a person and it would not be just $10, $15, or $200 here and there.

At the time that we were working on this provision of the Bill, if funding were at $100 million, which was where it was when we were considering it, to meet this $7,500 minimum you would have to have 7,000 school children, or approximately 700 handicapped children in your area. This has changed since appropriations have increased. But if you know that was the figure when funding was at $100 million and currently appropriations are at $315 million, one can get some idea of what the differential is.

Another provision which regulates the relationship between the local educational agency and the state educational agency provides that a state may withhold money from the local educational agency if the LEA is serving 100 percent of its children and it's providing a free, appropriate public education to each and every one of these handicapped children. This was adopted so that funding could be focused on areas of high need within a state--a goal of the Bill being to assure that each child receives an education. It was not intended to provide an offset for local educational agency expenses. The main intent of this provision is to assure that each child receives an education and to assure that the money gets targeted where there is most need.

In terms of this provision, however, the state has to find that a local district is providing all children a free, appropriate public

education, which means providing an education consistent with the individualized program requirement. And there is an appeals procedure available to an LEA under the General Education Provisions Act if it wishes to challenge a state's decision.

On another funding-related issue, the issue of level of appropriations is important. As indicated previously, at the time we were considering this Bill in the Committee, funding was at $100 million. It has substantially increased. It doubled in Fiscal 1976 to $200 million, and we're able to obtain $315 million for Fiscal Year 1977. To see the real growth for this area, and a measure of the importance that the Congress places on providing funding and assuring that each handicapped child has an education uniquely suited to his needs, one must consider that, in Fiscal 1973, only $37.5 million was being spent in this area. Thus, we are not talking about a jump from $100 million to $315 million, we are really talking about a movement from $37.5 million to $315 million.

Another provision of the law which should be mentioned with respect to funding is that local educational agencies and state educational agencies and other agencies receive money from the Federal government under the Vocational Education Act, under Headstart, under Title I and under Title III or IV of the Elementary and Secondary Education Act.

Public Law 94-142 does require that those funds be spent in a manner which is consistent with assuring free, appropriate education to all handicapped children. This funding within states also must be targeted in a way that meets the objectives of the state plan and of the local education plan under Public Law 94-142. I suggest, then, that the funding history so far has been very encouraging, and I believe that we will be able to obtain continuing growth in this area.

SECTION A-2

BEH PERSPECTIVES ON P.L. 94-142 AND ON REGULATIONS DEVELOPMENT

THOMAS B. IRVIN

While 94-142 is referred to as the Education for All Handicapped Children Act, it's not a new, discreet law unto itself. Public Law, 94-142 simply provides amendments to Part B of the Education of the Handicapped Act, just as Public Law 93-380 provided amendments in 1974.

It's also worth noting that many of the provisions in 94-142 are not new. Many were provisions of P.L. 93-380. In fact, there are some six or seven of them--the area of due process, nondiscriminatory testing, least restrictive environment, priority to children not receiving an education, child identification and confidentiality are some. Also, we didn't even need P.L. 93-380 to know that there's such a thing as least restrictive environment. Several previous court cases and state laws had already had with respect already establish that Doctrine as a major right related to matters of Education.

It's very much worth noting that Public Law 94-142 is a basic civil rights law. This law guarantees to handicapped children certain rights and protections, and these rights and protections must be provided whether a local district is getting funds under Part B or not. The Civil Rights of the handicapped have, in addition, been addressed by other related legislation. Section 504 of the Rehabilitation Act of 1973, which is now going to be administered by the Office of Civil Rights,

is a very strong piece of civil rights legislation. This Section, only four or five lines long, says, in effect, that no otherwise qualified individual shall solely, by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.

The proposed regulations under Section 504 and the regulations under 94-142 totally parallel each other. In one sense, it really doesn't matter whether 94-142 is in fact a civil rights law, or whether by not following it you're in violation under 504. The end result really is the same, as the primary issue is addressed by both statutes.

I'd like to discuss the public involvement activities we've had in the regulations development process, and then treat very briefly the nature, scope and organization of the regulations. Following this I will touch briefly on a few substantive areas.

In the balance of this paper, I will discuss first the public involvement activities we've conducted during the regulations development process; second the nature and scope of the proposed regulations; and third some issues related to the provisions for a free, appropriate public education, due process, nondiscriminatory testing, least restrictive environment and individualized education programs.

First, some comments on the public involvement activities related to development of regulations on 94-142. When Public Law 93-380 was passed, and from some of our experiences in development of regulations for that act during 1974, it became very clear that major public involvement and input in the regulations development process was needed. Thus, when P.L. 94-142 was passed in November, 1975, we made the decision

to take the law to the field and get input from a whole variety of people throughout the country before any writing was done, and second, that we would then convene a large writing team outside of the Federal government essentially to assist BEH in developing concept papers that would be used as the basis for writing regulations under P.L. 94-142.

In this report, the Bureau actually conducted a total of twenty meetings, from March to August of 1976. These meetings were conducted on both a geographic and special interest basis. Over 2,200 people participated in these meetings, and BEH received hundreds of responses.

In June, BEH convened the previously referenced large outside writing team again. This team was composed of 168 people. Of the 168, there were about 17 people representing local education agencies, with some four or five great city schools represented. During this second three-day writing team meeting, we divided the 186 participants into 12 topical groups around major topics in the law, such as personnel development, least restrictive environment, due process and so forth.

Every topical group was given a tabbed and underlined copy of the law, the complete legislative history and every comment that BEH had received from the 11 input meetings that had been conducted. Writing team members were given a charge that before they left there at the end of the three-day meeting, they must deliver to us a concept paper dealing with their topic, which we in turn could use later in writing regulations. Each of the 12 groups came up with a product by the end of the third day.

As a next step, the twelve topical group products were developed into a consolidated concept paper. That concept paper came out around August 20, 1976. The concept paper was sent out to approximately 300 people, including the 168 in the regulations writing group plus a number

of other individuals. We received some tremendous responses. Two additional draft consolidated concept papers were issued, each reflecting major changes over the earlier drafts.

A second major issue which needs to be addressed is the nature and scope of P.L. 94-142 regulations. One specific issue facing BEH is how detailed should regulations be. We had some commenters who really feel that greater specificity is needed and more direction is needed from the Federal level. We have, however, a lot more people who are fearful that the Federal government is going to overregulate.

Here's the position we've taken. We see the development of regulations as being an evolutionary process that's probably going to take several years to fully develop. P.L. 94-142 is very specific on many points, and since implementation, or rather, the consequences of implementation, is down the road some, we feel that the most rational approach to follow at this time is to write minimum regulations and then to amend and revise those regulations as need and experience dictates. The fact that the concept paper on which regulations will be based is 200 pages long does not belie our intent. Much of what has been done in developing the concept paper is to lift verbatim primary sections of the law, since the ultimate aim is that users would not have to reference 14 different documents. In this writing model, everything that's pertinent--including all of the Act itself--would end up in the regulations, plus whatever interpretations are necessary. Our basic approach has been to expand on the law only where it seemed to be necessary for points of clarification, or where further direction seemed to be essential.

A quick overview of the organization of the regulations may be useful, and the following brief comments discuss each major section of the proposed regulations document.

Part A of the regulations document is a basic, general introductory sub-part which includes the purpose and scope of the regulations, as well as necessary definitions. All the major definitions of words or terms used throughout the whole statute are in this section.

The next category in the regulations, covering sub-parts B through F, deals with the conditions and the procedures which must be followed in order to receive funds under Part B. In other words, if you're a state education agency, you will have to submit an annual program plan, to the Commissioner of OE. If you're an LEA and you want to receive funds you must submit an annual application to your state education agency, and so forth. Sub-part F contains the procedures for counting children. These procedures have already appeared in proposed form in regulations and were issued on September 8, 1976.

One specific point related to the LEA application requirement should be made. All points that are in the LEA application are verbatim requirements from the law. The only thing BEH did is to add headings. Most of those requirements deal with assurances and procedures. In this respect, it's important to bear in mind that the state education agency, not the Bureau of Education for the Handicapped, will determine the forms and procedures to be used by each LEA in submitting the application to the state agency. It may be, however, that, beginning in Fiscal 1979, LEA applications will be able to incorporate by reference the major procedures from the 1978 application. Many of those procedures will presumably not change from year to year, so a district won't have to

keep repeating and repeating and repeating. That's what BEH is going to ask the states to do in the submission of their annual program plan, and I presume they would follow the same procedures with LEA's.

Sub-parts G through M of the Regulations deal with individual rights and protections and safeguards which are applicable to all public education agencies in the state.

Sub-parts N and O relate to private schools, and Sub-part P is comprehensive Personnel Development. The provision for Personnel Development is a basic state education agency requirement, but there is a linkage with the LEA defined.

Sub-part S relates to financial participation. Sub-parts T and U are the Commissioner's hearing procedures with respect to state education agencies, and specify his responsibility for withholding funds in certain cases.

Finally, the last sub-part, Sub-part V, relates to incentive grants for education of children in the three to five age group. That's a separate provision with a separate funding authority.

The final major section of this paper deals with several major provisions of the law, and with selected issues or questions which have to be addressed in developing specific regulations.

The free and appropriate public educaion requirement, which is included in Sub-part G, is a new provision. BEH basically adopted the language from the statute, which says in effect that a free and appropriate public education must be available to all handicapped children 3 to 18 by September 1, 1978, and 3 to 21 by September 1, 1980. There is one exception, and that is with respect to children 3 to 5 and 18 to 21,

P.L. 94-142 provisions do not apply if they're inconsistent with existing state law or practice or court order.

The term "practice" is a very troublesome term in these provisions, and frankly the Bureau has not at this time fully come to grips with this. Some advocates are saying to us if one LEA in a state is serving any handicapped children between the ages of three and five, then every district in the state must serve all handicapped children between the ages of three and five. The Bureau has not taken that particular position at this juncture.

BEH posture at this time is that the term "practice" relates to programs for the education of handicapped children which are permissive in nature, and under permissive state legislation, with respect to handicapped children ages 3 to 5 and 18 to 21, the state and local education agency shall determine the target populations to be served and the nature and extent of services to be provided. That's the position the Bureau has taken so far.

The law also requires state and local education agencies to provide a goal of full educational opportunity for all handicapped children, and this requirement was included in Sub-part G.

As part of the full educational opportunities goal we did add a basic rights issue from the Congressional report language, which states in effect that handicapped children must have available to them the variety of program options available to non-handicapped children, including but not limited to art, music and vocational education. Also, in keeping with the report language in both the House and Senate reports, the regulations will specify that physical education services must be available to every handicapped child, and that handicapped children

should be afforded the opportunity to participate in the regular physical education program unless the child's individualized education program indicates the need for specialized physical education services. If specialized services are needed then the agency must either provide them or arrange for them to be provided.

Another requirement, the procedural safeguards requirement, originally came about in P.L. 93-380, but has been greatly expanded under P.L. 94-142. Section 615 of P.L. 94-142, for example, is so specific that it was incorporated in its entirety in the regulations, and was expanded on only where necessary for further clarification.

The Regulations will expand considerably on the requirement that parents of a handicapped child must be afforded the opportunity to obtain an independent evaluation of the child. That's all the statute says on that issue. That's all that was said under P.L. 93-380 previously. Some clarification is needed because all parents already have the right to an independent evaluation of their child. The issue seems to center on the cost of the evaluation and who pays. In this respect, it is our position that, if the parent obtains the evaluation directly through his or her own efforts, the cost of the evaluation will be born by the parent. However, the results of that evaluation must be considered by the state or local education agency in any decisions made with respect to the provision of a free, appropriate public education for the child. And, in addition, the results could be presented as evidence at an impartial due process hearing.

If, however, the parent should come to the school district or to the state and request that an independent evaluation be provided through the state or local education agency, and if the agency agrees with the

request, then the agency would pay. If the agency doesn't agree with the request, and the parent submits a complaint as part of due process, then the issue of who pays for the evaluation could become the subject of an impartial due process hearing. If the hearing officer feels that additional evaluation data are needed on a child to help make a decision about that child, then the cost for that evaluation would be at public expense.

As a check and balance dimension, however, our posture is that, whenever a state or local education agency pays for the cost of the independent evaluation, that agency may establish the criteria under which the evaluation may be obtained, including the location, and the qualifications of the examiner.

The regulations cite verbatim the provisions with respect to impartial due process hearings, hearing rights, administrative appeal and civil action. A minor change regarding the impartial hearing officer was made. Under this change, no hearing conducted pursuant to the requirements of this sub-part may be conducted by an employee of the state or local educational agency involved in the education or care of the child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearings. A person meeting the stated conditions of impartiality who is paid by a state or local education agency to serve as a hearing officer would not, however, be considered to be an employee of that state or local agency. The same provision was made with respect to paying surrogate parents.

As a side note, I personally do not believe that a school board member can serve as an impartial hearing officer. However, we cannot regulate on this point because the statute only prohibits employees of agencies from serving in that capacity.

The individualized education programs (IEP) requirement is a major one. I feel this is the key provision in 94-142. The term IEP is applied to specific provisions in seven different points in the statute, and the legislative history from the eight major documents in the legislative history is more extensive on this point than any other point in the entire statute.

In regard to this requirement, several concerns have been raised. The first relates to the issue of can you conduct a planning conference for developing an IEP if the parents don't attend? The law is pretty specific on that. The rules specify that every attempt must be made to assure parental participation, including scheduling the meeting at a mutually agreed upon time and place. However, if a parent furnishes a written waiver of his or her right to attend the conference, or if the parent cannot be located, or if the parent simply does not respond or refuses to attend, the local education agency must document their efforts, and, once they are appropriately documented, may then proceed without the parent being in attendance.

The second concern relates to the question, "Is an individualized education program a legally binding document?" That's very threatening to teachers. It's also certainly threatening to school district officials. Congressional report language in both Houses say no. For example, the June 2, 1975 Senate Report contains this statement: "It is not the committee's intention that the written statement developed at an individual planning conference be construed as creating a contractual relationship." Now, I think the intent or the expectation of what's supposed to transpire is very clear. First of all, the local district must develop an individualized education program on every child, and is

responsible for providing the services consistent with that IEP. But the agency and the teachers certainly could not be held accountable if the child does not achieve the growth that's been set forth in his annual goal and short term objectives.

A few comments on the Doctrine of the least restrictive environment should also be made. In keeping with the statute, the Regulations require a state education agency to establish a policy and procedures with respect to the least restrictive environment. The provisions are applicable, as you know, to each local educational agency. As articulated in the concept paper, each handicapped child's placement must be determined at least annually and be done on an individual basis, and that, where possible, the IEP be the vehicle for making this determination. Also required is that each state must establish a continuum of special education placement services. Continuum points, or levels, are not specified because in one state there may be eighteen levels and in another state more or less. What is set is a minimum by saying that each state's continuum must include at least the placement options set forth in the statute itself.

There are a number of areas which have not been addressed in the regulations concept paper. The whole issue of how to administer the priorities has not been addressed. The funds are distributed by the states to the LEAs in the context of these priorities, and funds are supposed to be used in terms of these priorities.

A related question to this is how can an LEA use funds. If an entitlement of a million dollars is allocated to a particular district, specifically how can you use those funds, given certain priorities as applied to an individual district. On another finance-related issue,

the whole issue of comparability is one we haven't resolved completely. We elected at this time to just simply reiterate the statutory statement on it.

In summary, I should state that Public Law 94-142 is not an OE law, it's not a BEH law. It's the Law of the Land. It's clearly going to affect every one of the 16,000 school districts in the nation, all of the SEAs, every institution of training and every institution serving handicapped children. It ultimately either will touch or have a direct effect on every handicapped child in the country. Now, if any have hang-ups with the law itself, the only recourse is through the Congress, not through BEH. But until that law is amended, all professionals and citizens together have the responsibility to get on about the business of attempting to implement this Act as quickly and as smoothly as possible.

SECTION B

SEVERAL MAJOR PROVISIONS: REVIEW AND DISCUSSION

EDITORS' NOTE

Contributors to this Section are professionals knowledgeable about the background and content of selected major provisions of P.L. 94-142, and each has explicated in detail one of these major provisions. These contributions are intended to provide the dimension of professional opinion and information as a supplement to the more formal language of law and regulation, and to provide conceptual depth and a broader knowledge base than one could obtain, strictly speaking, from the words of law and regulation.

Five of the many major provisions of P.L. 94-142 were selected for purposes of this text. These are:

1. Funding and Entitlement Provisions
2. The Doctrine of the Least Restrictive Alternative Requirement
3. The Full Services Requirement
4. The Individual Education Program Requirement
5. The Nondiscriminatory Testing and Evaluation Systems Requirement

SECTION B-1

FUNDING AND ENTITLEMENT UNDER P.L. 94-142

RICHARD A. ROSSMILLER

Public Law 94-142, the Education for All Handicapped Children Act, includes a basic funding formula which provides that entitlement is to be based on the number of handicapped children ages 3 to 21, multiplied by the average pupil expenditure "in public elementary and secondary schools in the United States," multiplied by a specified percentage that is stated in the law.

The percentage stated for the first year, Fiscal 1978 (beginning October 1, 1977) is five percent. The percentage increases to 10 percent for Fiscal 1979, to 20 percent for Fiscal 1980, to 30 percent for Fiscal 1981, and finally to 40 percent for the fiscal year beginning October 1, 1981 and each year thereafter.

It must be remembered, however, that the formula only establishes an entitlement formula; it does not guarantee that the necessary funds will be appropriated. Unless Congress appropriates the necessary funds, the amount of Federal funding will fall short of the amount needed to provide the percentages specified.

The term, "average per pupil expenditure" is defined as the "aggregate current expenditure in the second year preceding the fiscal year for the computations." Expenditures for capital outlay and debt service are excluded from the computation. The computation includes all

expenditures by local education agencies (LEA's) as well as direct state expenditures. Thus, the computation is based on aggregate current expenditures by all local education agencies in the second fiscal year preceding the fiscal year of the computation, as well as all direct state expenditures for services. This sum is divided by the total number of pupils in average daily attendance to obtain the average expenditure per pupil in the United States for elementary and secondary schools.

The number of handicapped persons ages 3 to 21 is defined as the average number of handicapped persons receiving special education and related services on October 1 and February 1 of the preceding fiscal year. That is, a pupil count is taken on the first of October and the first of February and averaged to determine the number of handicapped persons ages 3 to 21.

An example will illustrate the computation procedure. Let us assume that a state has 100,000 children who qualify as handicapped under P.L. 94-142 definitions. Let us also assume that the average per pupil expenditure for elementary and secondary schools in the United States is $1,200. For the first year of the program, one would compute the state's entitlement by multiplying the number of children (100,000) by $1,200 and multiplying that product by five percent, thus obtaining a product of $6,000,000.

During the first year, Fiscal 1978, 50 percent of the funds must be distributed to local education agencies and intermediate agencies which are providing services for handicapped children. In Fiscal Year 1979 and thereafter, 75 percent of each state's entitlement must flow through to local and intermediate education agencies.

The money retained by the state may be used to support direct services provided by the state and also to help cover administrative costs. However, there is a limitation on administrative costs--either five percent of a state's entitlement or $200,000, whichever is greater.

To summarize, in Fiscal 1978 a state with an entitlement of $6,000,000 would have to "flow through" to local and intermediate education agencies at least $3,000,000. More than half of the total amount could be allocated to local and intermediate agencies, but half of the total must flow through. In Fiscal Year 1979 and thereafter, 75 percent of the money the state receives must flow through to local and intermediate education agencies.

Turning to LEA's, the allocation of funds to local agencies is based on the ratio of the children served in the agency to all of the children served in the state by LEAs and intermediate agencies that apply for funding. If we assume, for example, that an LEA has 10,000 handicapped children out of the state's total 100,000, that LEA would be entitled to receive 10 percent of the funds that are available for distribution to LEA's in the state. If we assume that the state has $6,000,000 to distribute, and that half of the $6,000,000 would be distributed to LEAs, then the local education agency in our example would receive $300,000. Clearly, $300,000 will not go far toward defraying the cost of educating 10,000 handicapped children. During the initial year of the program the amount of money involved is relatively small. However, if the appropriations come close to the entitlements, by 1982 (when the index number is 40 percent rather than 5 percent) the amount of money involved will become quite significant and would defray a substantial share of the cost of educating handicapped children.

Some additional limitations contained in the law should also be noted. Perhaps most important is the specification that not more than 12 percent of the population ages 5 to 17 can be claimed as handicapped. Furthermore, not more than one-sixth of the persons identified as handicapped may be pupils with learning disabilities. (The law also calls for a special study of learning disabled handicapping and there is a possibility that the two percent restriction will be modified in the future.) The 12 percent limitation undoubtedly was imposed to forestall the use of P.L. 94-142 as a way of securing federal support for the education of virtually all children in the country under the guise that they are in some way handicapped.

The law establishes two priorities for service: (1) first priority must be given children who are not currently served at all and (2) second priority must be given to improving services for those who are now being served, but not adequately. These priorities create the possibility that a district that is already providing adequately for handicapped children could be precluded from receiving funds under P.L. 94-142 until other districts within the state have met the first two priorities established in the law.

Reference is made in P.L. 94-142 to "allowable costs." I interpret allowable costs as funds utilized for the conduct of programs and projects approved by the state education agency. The law contains a description of the local plan--the application--that must be submitted by an LEA as a prerequisite to receiving funding. Each LEA must, in its application, provide satisfactory assurance that the funds received will be applied toward meeting the excess costs incurred in providing that all handicapped children residing in the territory served by the agency

providing the services will be identified, located, and evaluated. The plan must also provide a practical method for determining which children are currently receiving special programs, and must also establish the policies and procedures to be utilized in developing the individualized educational programs called for by the law. The LEA's plan also must establish a goal for accomplishing provision of full educational opportunities for all handicapped children.

The plan submitted by the LEA must also provide satisfactory assurance that funds received under the provisions of P.L. 94-142 shall be used only to pay for the excess cost directly attributable to the education of the handicapped, as well as assurance that the funds will be used only to supplement the funds already available and to increase the level of state and local funds expended.

In no case shall the funds provided under P.L. 94-142 supplant state and local funds. There is a provision, however, that if a state can satisfy the U.S. Commissioner of Education that adequate educational services are being provided to all handicapped children in the state, then funding received under the provisions of P.L. 94-142 may be used to supplant rather than supplement state and local funding.

The law defines "excess cost" as the cost above the regular cost of providing education and related services to handicapped children in elementary and secondary programs. "Regular costs" are defined as all expenditures for elementary and secondary students in the preceding school year excluding capital outlay and debt service. The intent of the law is to provide Federal support for a portion of the additional cost involved in providing educational programs for the handicapped.

Regular costs may be computed by determining the total expenditure per elementary and secondary pupil in the district and subtracting from that total cost (a) expenditures under P.L. 94-142, (b) expenditures under Titles I and VII of the Elementary and Secondary Education Act, (c) expenditures for special education and related services from state or local sources, (d) expenses for compensatory education and related services, and (e) expenses for bilingual education and related services. This net expenditure figure is then divided by the average number of pupils in membership in elementary and secondary programs based on a pupil count taken on October 1 and February 1 of the preceding school year to arrive at the cost per pupil for the regular program.

In short, the procedure is to determine gross expenditures, exclude capital outlay and debt service, and subtract expenditures for programs designed to serve particular target populations. It is assumed that the net expenditure determined through this process represents the cost of the regular educational program.

Potential Problems

Perhaps the most serious potential problem inherent in P.L. 94-142 is the possibility that the sums actually appropriated will be insufficient to achieve the level of funding authorized. The requirements of the law must be met whether or not the amounts actually appropriated attain the levels of funding authorized. Should the appropriations be insufficient, it will be extremely difficult for states and local education agencies, already hard pressed for funds, to provide the level of support needed to meet the expectations raised by P.L. 94-142.

Another potential problem is the relationship of money available under P.L. 94-142 to the state/local funding of special education and

general education. This relationship will be of concern in all states. The 50 states have widely varying provisions dealing with the financing of educational programs for the handicapped. Some states use categorical aids; some use the state's general aid program; some use combinations of categorical and general aids. P.L. 94-142 provides that the state cannot reduce its current contribution in support of education of the handicapped until it has satisfied the requirement that all handicapped children are being served adequately. But how does one go about establishing whether or not the state is or is not maintaining its contribution? This can be a very complex problem, particularly in states where both general and special aids are available to help defray the cost of educating handicapped children.

For example, Wisconsin has a categorical aid program for special education and a percentage or power equalizing program for support of general education. To the extent that the cost of educating handicapped children in a given school district is not adequately covered by the categorical aids, the district qualifies to have the cost covered as part of its power equalizing aids. Thus, there are two separate state support programs that apply, and to determine whether the state is or is not maintaining its current contribution one would have to determine how much of the general state aid a district received was actually being generated by expenditures for the education of handicapped children that are not covered by the categorical aids received by the district. The nature of the problem will vary from state to state, but it is likely to be a difficult task in nearly all states to determine whether or not the state is maintaining its effort.

A third potential problem is found in the requirement that state and local funds be used to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of a district which are not receiving funds under the Act. It is difficult to interpret the meaning of this requirement. In a decentralized system, for example, the requirement could be interpreted as requiring equal services in all parts of the system. But how is comparability to be established? Few, if any, school systems maintain record-keeping capability to either substantiate or disprove an allegation that there is lack of comparability among programs within a district.

A fourth potential problem is that of maintaining fiscal accounts which will substantiate that the funds provided under P.L. 94-142 are being used exclusively for the excess cost of educating handicapped children.

If a child is being mainstreamed, for example, it will be very important to identify and account for those services a handicapped child is receiving that other children in the same classroom are not receiving. Unless one can accurately track such costs, how will one establish that there were, in fact, excess costs involved in educating a handicapped child in a mainstreaming environment? The revised version of the United States Office of Education's (USOE) Handbook II (Financial Accounting for Local and State School Systems) that is currently available provides the technical capability for maintaining records in this form.

I am not optimistic, however, that local school districts in either large cities or rural areas are in a position to track expenditures on a pupil-by-pupil basis. In fact, it is difficult to track expenditures on a program or school basis at the present time. Yet the requirement of

program comparability, and the requirement that Federal funds available under P.L. 94-142 be used to defray the excess cost of educating handicapped children, implies that it may be necessary to track both services and expenditures on an individual pupil basis.

In summary, the funding and entitlement sections of P.L. 94-142 provide a specific method for determining state and local appropriations, and provides a system of priorities which govern how this appropriation can be utilized. Several potential problem areas in the implementation of these provisions and the total Act seem clear at this time, primary among these is the possibility that funding appropriations will fall short of expectations, and that states and districts will be attempting implementation under serious financial constraints.

SECTION B-2

THE LEAST RESTRICTIVE ALTERNATIVE REQUIREMENT: LEGAL AND ADMINISTRATIVE CONSIDERATIONS

DAVID P. RILEY AND ROBERT L. BURGDORF, JR.

The rights of handicapped children delineated in P.L. 94-142 are not new. Due process, confidentiality, surrogate parents, least restrictive alternative, child identification and nondiscriminatory testing - all of these provisions appeared in that precedent-setting compilation of law entitled the Education Amendments of 1974, P.L. 93-380. That law established the Federal statutory rights handicapped children hold with regard to education as well as the procedures whereby states would begin to guarantee those rights.

The Education of All Handicapped Children Act, then, perfected, consolidated, and amended already existing Federal law. The point is that federal, state and local education leaders have had a forgotten, it seems, but additional year to ponder, evaluate, predict (both heaven and hell) what implications the Federal mandates hold for the function and role of special education. Even so, confusion remains over several of the law's provisions.

One of the most subtle yet profound, easily accepted yet misunderstood, and, thus, most difficult provisions of the law to implement and monitor is the doctrine of the least restrictive alternative. By now most special educators are more than familiar with the various

schematic representations of the continuum of services of 'cascade' systems. Unfortunately, this seems to have led to the determination that the least restrictive alternative is a 'place'; that 'the' least restrictive alternative is the regular classroom and, thus, every effort should be made to (at all costs!?) keep special needs children in the regular class. While few would deny that many children who are now receiving special education assistance out of the regular class could be serviced as well, if not better, in the regular class, the least restrictive alternative concept goes beyond this narrow focus.

THE SOURCE OF THE LEAST RESTRICTIVE ALTERNATIVE CONCEPT

The doctrine of the least restrictive alternative had a separate history as a general legal doctrine before it came to be applied to the field of education. Its inception can be traced to as early as 1819 when Chief Justice Marshall of the United States Supreme Court declared that regulation affecting citizens of a state should be both "appropriate" and "plainly adapted" to the end sought to be achieved.[1] This concept was elaborated in succeeding cases until by 1960 the Supreme Court could say:

> In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of the legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose.[2]

The quoted language uses the phraseology "less drastic means for achieving the same basic purpose" to express the doctrine. The principle has elicited a number of other forms of judicial phrasing; courts have

referred to the "least restrictive means,"[3] the "least burdensome method,"[4] and the way we are embracing it herein, "the least restrictive alternative".[5]

In some ways, it is unfortunate that educators and public officials chose the terms "least restrictive alternative" to describe the doctrine when it came to be applied in an educational context, because a regular classroom setting may be quite the opposite of less restrictive when compared to some types of special educational settings having fewer restrictions and less regimentation than the ordinary classroom regimen. Perhaps "less drastic" or "more normal" alternative would have been preferable terminology. This observation is probably a moot one, however, since the expression "least restrictive alternative" has already become standard phraseology in educational and legislative circles.

The general doctrine of the least restrictive alternative requires, in simple terms, that state laws and public officials should be no more nasty than they absolutely have to be; citizens should not be burdened by impositions of any greater magnitude than required to achieve legitimate governmental purposes.

That this general principle has come to apply to the field of special education is largely a secondary consequence of emergence of judicial precedents dealing with problems of racial discrimination in public school systems. In the case of Brown v. Board of Education[6] and its progeny the courts held that racial segregation in the public schools is an unconstitutional practice, in violation of the Fourteenth Amendment's guarantee of "equal protection of the laws."

In 1969, some fifteen years after the Brown decision, similar principles were applied in reference to segregation of handicapped

children within the public education system. In Wolf v. Legislature of the State of Utah,[7] a case involving two mentally retarded children, a Utah court paraphrased the language of the United States Supreme Court in Brown and declared:

> Today it is doubtful that any child may reasonably be expected to succeed in life if he is denied the right and opportunity of an education. In the instant case the segregation of the plaintiff children from the public school system has detrimental effects upon the children as well as their parents. The impact is greater when it has the apparent sanction of the law for the policy of placing these children under the Department of Welfare and segregating them from the educational system can be and probably is usually interpreted as denoting their inferiority, unusualness, uselessness and incompetency. A sense of inferiority and not belonging affects the motivation of a child to learn. Segregation, even though perhaps well intentioned, under the apparent sanction of law and state authority has a tendency to retard the educational, emotional and mental development of the children.[8]

Such a holding does not, however, resolve all of the questions surrounding the educational placement of children with special educational needs. The Wolf decision is a strong statement of condemnation of segregation, but while such separation or segregation of students is generally harmful, it may be appropriate in some instances. The law has never defined equal treatment in such a way as to demand identical treatment for those with actual, pertinent differences. Many questions arise, therefore, as to how a general anti-segregation principle - the doctrine of least restrictive alternative - should be applied to specific factual situations.

When judicial tribunals were asked to deal with the more specific ramifications of the least restrictive alternative doctrine, they were very fortunate to be able to draw upon a body of educational concepts and

models which had already emerged from the attempts of experts in the education profession to grapple with these same issues. Educators had already developed somewhat sophisticated systems and constructs, such as the "cascade system" and the "continuum of services concept," which delineate various types or levels of special educational services and provide that each child should be educated in that setting which is as close to the regular classroom environment as possible.

Incorporating these educational concepts, the courts have applied the doctrine of least restrictive alternative as a presumption; it is not a black-and-white law, but rather it is a presumption of how things should take place. For example, in the Pennsylvania special education lawsuit, Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania,[9] the decree stated:

> It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of a presumption that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in special public class and placement in special public school classes is preferable to placement in any other type of program of education and training.[10]

In Mills v. Board of Education of the District of Columbia,[11] the court's order contained a shortened statement of presumption:

> Each member of the plaintiff class is to be provided with a publicly-supported educational program suited to his needs, within the context of a presumption that among the alternative programs of education, placement in a regular public school class with appropriate ancillary services is preferable to placement in a special school class.[12]

Likewise, in the Lebanks v. Spears decision in New Orleans,[13] it was ordered:

> All evaluations and educational plans, hearings, and determinations of appropriate programs of education and training hereinafter provided for shall be made in the context of a presumption that, among alternative programs and plans, placement in regular public school class with the appropriate support services is preferable to placement in special public school class and placement in a special public class is preferable to placement in a community training facility and placement in a community training facility is preferable to placement in a residential institution or other program of education outside the Orleans Parish public schools.[14]

When the concept of least restrictive alternative was adopted in Federal special education legislation, therefore, the statutes were simply crystallizing a principle which had already developed in case law and in educational theory.

REQUIREMENTS OF FEDERAL LAW

The Federal statute which was the immediate predecessor of P.L. 94-142 was the first Federal law to incorporate a requirement of the least restrictive alternative doctrine as it applies to the field of education. P.L. 93-380 mandated that state plans, required for Federal special education funding, include the principle of least restrictive alternative. P.L. 94-142 employs the same language in Section 612 of the Act:

> In order to qualify for assistance under this part in any fiscal year, a state shall demonstrate to the Commissioner that the following conditions are met:
>
> * * *
>
> (5) The state has established . . . (b) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public

> or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

This method of expressing the least restrictive alternative doctrine answers two important questions about the education of handicapped children. It tells with whom handicapped children should be educated, i.e., with their peer group of nonhandicapped children as much as possible; and where handicapped children should be educated, i.e., as close to the regular classroom environment as possible.

These state plan requirements will have an indirect but major impact upon urban and other local public school systems because the local education agencies will, in large measure, be the ones whose duty it will be to fulfill the promises made in the state plans. Moreover, another section of P.L. 94-142 puts a more direct burden of assuring least restrictive alternatives upon local school districts if they wish to benefit from Federal funding. Section 614 provides in part:

> (a) A local educational agency or an intermediate educational unit which desires to receive payments under Section 611 (d) for any fiscal year shall submit an application to the appropriate state educational agency. Such application shall - . . .
>
> (c) establish a goal of providing full educational opportunities to all handicapped children, including - . . .
>
> (iv) to the maximum extent practicable and consistent with the provisions of Section 612 (5) (B), the provision of special services to enable such children to participate in regular educational programs.

IMPLICATIONS FOR IMPLEMENTATION

The requirements of P.L. 94-142 in regard to least restrictive alternative are explained in more detail in Subpart L, "Least Restrictive Environment," of the Third Draft Consolidated Concept Paper which forms the basis for formal Regulations. Of major importance are Sections B and C of that Subpart. Section B, entitled "Continuum," provides:

> (a) The policy established by the state educational agency shall include a continuum of various alternative placements which must be available in order to meet the special educational and related needs of handicapped children throughout the state.
>
> (b) The continuum required by paragraph (a) shall (1) include the various alternative placements set forth in the Statute (including instruction in regular classes, special classes and special schools; home instruction; and instruction in hospitals and institutions), and (2) make provision for supplementary services to be provided in conjunction with regular class placement.

This specification of a continuum of educational services is a notable clarification of one means by which states will be expected to achieve concrete implementation of the general statutory requirement of least restrictive alternative.

The Education for All Handicapped Children Act was written, passed, and signed into law with two particular sub-groups of handicapped children in mind. This is very clearly presented in Section 612(3) where service priority is made "first with respect to handicapped children who are not receiving an education, and second with respect to handicapped, within each disability, with the most severe handicaps who are receiving an inadequate education. . ."

Such priorities have been echoed in our second generation state statutes and many Great City school systems have been in the vanguard of providing services to a population of students once thought to be unmanageable, untrainable, uneducable. The institutionalized child and the low incidence, severely handicapped now remaining at home represent one challenging element of implementing the least restrictive alternative concept in our schools.

As we provide for these new learners, we face ever diminishing budgets, many entrenched and often inappropriately trained staffs, and demands from other constituent groups for new and/or better programs. "Something has got to give!" has been heard from schoolmen over the past couple of years. While some would wish these realities to go away, the laws, regulations, court decisions, and pressures remain. We seem to have a choice: cope, manage, and lead, or move over for somebody who will. That's no choice! The challenge then is to implement and frankly, we are ill prepared to do so. Such seems to be the case not because of the uniqueness of the children we serve but more to the intransigence of our organizational, administrative, and personnel training behaviors. Our own attitudes, lack of creativity and/or commitment, seem also to hinder much of our progress.

In 1971, Luvern Cunningham spoke at the Minneapolis Leadership Conference about change systems in large urban school districts. At that time, he commented that "the patterned ways in which we have come to behave in schools now prove to be dysfunctional."[15] Certainly, the realism of this assessment is most aptly demonstrated in reviewing the implications of the doctrine of the least restrictive alternative.

Implementation requires an understanding and appreciation of the concept of least restrictive alternative <u>as a concept</u>. It represents more

than a placement on a cascade. It represents a determination of a child's need for services and how those services can be provided in a quality fashion and in a manner which is as culturally normal as only the child's abilities and needs allow.

Time, attendance, school year, organization, facilities, roles, and programs are no longer sacred or so fixed that they cannot/should not be adapted/molded to accomodate identified child needs. Each becomes a tool to be strategically and dynamically defined and employed to meet the determination of an individualized educational program. In doing so we will re-create the role of special education in schooling and restructure the relationship between special educators and classroom teachers.

The last few words of Section 612(5), quoted above, provide an essential guide to our review. More restrictive special education alternatives, such as special classes, must only be recommended after "regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." Several administrative and in-service needs become priorities:

1. An intensive review must be conducted not only of special education programming alternatives but those of general education which pre-condition referral and/or restrict a child's opportunity to move within or without special education programs as program objectives are met.
2. Special educators must abandon "empire building" practices - deny it we might - and learn to collaborate with other education personnel in creating alternatives within the context of the regular education program;

3. Special educators must become more skilled in consultation and joint student planning and programming (this has major implications for state departments and colleges, where much change is required to ensure that licensure/certification and training requirements are relevant to current practices and programs).

4. Education professionals as well as parents need to be reassured that, in implementing the least restrictive alternative concept, the intention is not to jettison quality services to children. The idea that only "special" (usually segregated) programs can provide the intensity - and quality - of services a child needs has been so successfully sold that transition to more mainstreamed programs must be such that quality of programming for special needs children is maximized and perceptions as to negative impact on regular classroom operations are minimized.

5. Clear policies must be adopted which clarify both the programmatic and supportive nature of special education; organizational structures and procedures need be reflective of that dual function.

The last is made more difficult by the confusion in terms now prevalent in special education. Gross and Vance (1975) pointed out the problem:

> Mainstreaming has been interpreted as an attempt to provide services to special education students in the "least restrictive program alternative." The least restrictive alternative has been defined as the delivery of special education services under the highest possible degree of "normalization." "Normalization" has been referred to as an attempt to organize special education services in a way that allows maximum opportunities for "integration." Finally, "integration" is said to be an attempt to

> provide programs and services to handicap students in the "mainstream"!!! Special education has obviously gone full circle with its mainstream related jargon and as a result definitions for each of these terms have become blurred.[16]

With such circularity, it becomes important to clarify for ourselves as well as for our constituencies what we mean by least restrictive alternative. Operationalizing the concept might be accomplished by employing a checklist such as the following (adapted from Wolfensberger and Glenn's Program Analysis of Service Systems[17]).

1. Is the program setting isolated?
2. Is the program setting easily accessible?
3. Is the program small enough (i.e., numbers of children) to be easily absorbed into the surrounding social system?
4. Does the program and setting permit and facilitate social integration?
5. Does the program meet the child's special education needs with a minimum of segregation?
6. Does the program maximize social integration with nonhandicapped children as well as provide contact with typical resources?
7. Does the program and setting enhance the way in which the child is perceived by others? - by himself?
8. Is the program or setting labeled in a manner which devalues the way in which the child is perceived?
9. Is it staffed by individuals whose affiliation enhances the program's image as well as assures quality programming?
10. Is the program provided in a setting and in a manner which is age-appropriate for the child?

11. Is the program comprehensive in terms of the options or alternatives available?

12. Is the program developmentally sequenced (i.e., grows with the child as his/her competencies increase)?

In line with the above, Section C of Subpart L of the P.L. 94-142 Regulation Concept Paper proposed that specific requirements be established which education agencies must follow in implementing the least restrictive environment provision:

> (a) Each handicapped child's educational placement shall (1) be determined at least annually, and (2) be based on his/her individualized education program.
>
> (b) To the extent necessary to implement the individualized education program for each handicapped child in an applicable agency, that agency must provide, or arrange for the provision of, all of the various alternative settings included in the state policy.
>
> (c) Except where a handicapped child's individualized education program requires some other arrangement, the child shall be educated in the school which he or she would normally attend if not handicapped.
>
> (d) Any educational facilities necessary to carry out a child's individualized education program must be accessible to that child.
>
> (e) Steps must be taken to assure that the implementation of the least restrictive environment provision will not produce a harmful effect on the child or reduce the quality of services which he or she requires.

In addition to actual implementation, i.e. providing least restrictive environments, another important element is the documentation of what has been done. From the perspective of education officials (and their legal counsel), this documentation aspect may be equally as significant as the substantive activities of compliance. For purposes of due process hearings, court actions, and securing of Federal funds, documen-

tation of how the least restrictive alternative principle is implemented may be critically important. Therefore, it is necessary to record changes in personnel, organization, facilities, etc., as these might affect the least restrictive alternative mandate. In addition to training and retraining personnel in order to enable them to cope with their new responsibilities under the least restrictive alternative system, it is necessary to document how many teachers received such training. In addition to transferring pupils into less restrictive programs, it is necessary to compute the numbers of students who have been thus reassigned.

In regard to this documentation process, two specific suggestions may be particularly helpful. First, a statement of the alternatives investigated and/or utilized and the reasons why other less restrictive alternatives were not appropriate should be made a standard part of a student's individualized education program document. This could be accomplished through the development of a form included in every individualized education program plan and listing the various levels of the state's continuum of educational services. Starting from the regular classroom situation, specific educational reasons would be listed as to why each particular level was found to be inappropriate to meet the child's educational needs before resort could be made to any of the more restrictive levels of educational services.

Secondly, the issue of least restrictive alternative should be a component of due process hearings. At any hearing which deals with questions of the appropriateness of a child's placement or program, the hearing officer should be instructed to incorporate as part of his or her decision a finding of what alternatives were investigated and why less restrictive alternatives were not appropriate.

SUMMARY

P.L. 94-142 and its Regulations, as promulgated in early 1977, form the most comprehensive statement regarding the requirement of least restrictive alternatives in educational programs. It is important to re-emphasize, however, that P.L. 94-142 did not invent these concepts, but merely crystallized and restated those legal requirements which had been enunciated in court cases and other legislation. It has become increasingly clear that the least restrictive alternative doctrine is mandated by laws other than P.L. 94-142 and that such mandate is, therefore, obligatory even before the effective dates specified in P.L. 94-142.

In West Virginia, for example, a Federal district court was recently asked to rule upon a case where a child with spina bifida was excluded from the regular public school classroom.[18] The child had normal intelligence and was able to walk, albeit with a limp, but was unable to control her toileting function. The school officials wanted her placed in a special class for handicapped children. The lawsuit challenged this segregational decision as unlawful discrimination. The Federal court declared:

> The exclusion of a minimally handicapped child from a regular public classroom situation without a bona fide educational reason is in violation of Title V of Public Law 93-112, "The Rehabilitation Act of 1973," 29 U.S.C. 794. The Federal statute proscribes discrimination against handicapped individuals in any program receiving Federal financial assistance. To deny to a handicapped child access to a regular public school classroom in receipt of Federal financial assistance without compelling educational justification constitutes discrimination and a denial of the benefits of such program in violation of the statute. School officials must make every effort to include such children within the regular public classroom situation, even at great expense to the school system.[19]

Thus, it is clear that, with or without P.L. 94-142, the legal mandate of least restrictive alternative is upon us. The critical task now is to turn to implementation of this concept. P.L. 94-142 is quite significant, however, in providing the impetus for comprehensive planning as to how such implementation should proceed. P.L. 94-142 provided education agencies with both an administrative challenge and a legal mandate to make the doctrine of least restrictive alternative an educational reality.

FOOTNOTES

[1]McCulloch v. Maryland, 4 Wheat 316, 421 (1819).

[2]Shelton v. Tucker, 364 U. S. 479, 483 (1960).

[3]Smith v. Sampson, 349 F. Supp. 268, 271 (D.N.H. 1972).

[4]Ramirez v. Brown, 9 C. 3d 199, 107 Ca. R. 137, 507 P. 2d 1345, 1353 (1973).

[5]E. g., Covington v. Harris, 419 F. 2d 617, 623 (D. C. Cir. 1969).

[6]347 U. S. 483, 495 (1954).

[7]Civil No. 182646 (3rd Jud. Dist. Ct. Utah, Jan. 8, 1969).

[8]Ibid.

[9]334 F. Supp. 1257 (E. D. Pa. 1971).

[10]Id. at 1260.

[11]348 F. Supp. 866 (D.D.C. 1972).

[12]Id. at 880.

[13]60 F.R.D. 135 (E.D. La. 1973).

[14]Id. at 140.

[15]Cunningham, L. "Change Systems in Large City Education." In R. A. Johnson, J. C. Gross, and R. F. Weatherman (eds.) Leadership Series in Special Education, Vol. 1. Minneapolis: University of Minnesota, 1973.

[16]Gross, Jerry, and Vance, Vernon. "Mainstream Educator Training in A Cooperative Joint Agreement and Intermediate Unit District." In Johnson, Weatherman, Rehmann (eds.) Leadership Series in Special Education, Vol. 4, pp. 103, 106-107. Minneapolis: University of Minnesota, 1975.

[17]Wolfensberger, W. and Glen, L. Program Analysis of Service Systems: A Method for the Qualitative Evaluation of Human Services. Toronto, Canada: National Institute on Mental Retardation.

[18]Hairston v. Drosick, C. A. No. 75-0691 C H (S.D.W.Va. Jan. 14, 1976).

[19]Id. at p. 8.

SECTION B-3

MEETING THE FULL SERVICES REQUIREMENT

JERRY C. GROSS

Public Law 94-142 contains provisions which will impact on special and regular educators at all levels of government--Federal, State and Local. Perhaps with the exception of the requirement for an individualized education program for each child, the provision requiring full education opportunities for all handicapped children will be most challenging for both special and regular educators.

This paper is designed to bring some measure of clarity to the ubiquitous full educational opportunities provision as it relates to the urban educator faced with the task of implementing Public Law 94-142. Without having the benefit of experience in the implementation of this law, these remarks on the full services provision will be based on an analysis of the law, and discussions with State and Federal officials familiar with the law.

THE FULL SERVICES PROVISION OF PUBLIC LAW 94-142

The full services provisions of Public Law 94-142 are included in Section 612 and 614. Section 612 (lines 1-30 below) details the states' responsibilities under this provision. It reads as follows:

In order to qualify for assistance under this part in any fiscal year, a state shall demonstrate to the Commissioner that the following

conditions are met:

(1) A. there is established

(2) i) a goal of providing full educational opportunity to all

(3) handicapped children

(4) ii) a detailed timetable for accomplishing such a goal, and

(5) iii) a description of the kind and number of facilities, per-

(6) sonnel and services necessary throughout the state to

(7) meet such a goal;

(8) B. a free, appropriate public education will be available for

(9) all handicapped children between the ages of three (3)

(10) and eighteen (18) within the state not later than September

(11) 1, 1978, and for all handicapped children between the ages

(12) of three (3) and twenty-one (21) within the state not later

(13) than September 1, 1980, except that, with respect to

(14) handicapped children aged three (3) to five (5) and ages

(15) eighteen (18) to twenty-one (21), inclusive, the requirements

(16) of this clause shall not be applied in any state if the

(17) application of such requirements would be inconsistent

(18) with state law or practice, or the order of any court,

(19) respecting public education within such age groups in the

(20) state;

(21) 3. The state has established priorities for providing a free,

(22) appropriate public education to all handicapped children,

(23) which priorities shall meet the timetables set forth in

(24) clause (b) of paragraph (2) of this section, first with

(25) respect to handicapped children who are not receiving an

(26) education, and second with respect to handicapped children,

within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (b) of paragraph (2) of this section.

Section 614 (a)(c) spells out the responsibilities of the local education agency under the full service provision.

A local educational agency or an intermediate educational unit which desires to receive payments under Section 611(d) for any fiscal year shall submit an application to the appropriate state educational agency. Such application shall--

C. establish a goal of providing full educational opportunities to all handicapped children, including -

i) procedures for the implementation and use of the comprehensive system of personnel development established by the state educational agency under Section 613 (a)(3);

ii) the provision of, and the establishment of priorities for providing a free, appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

iii) the participation and consultation of the parents or guardian of such children; and

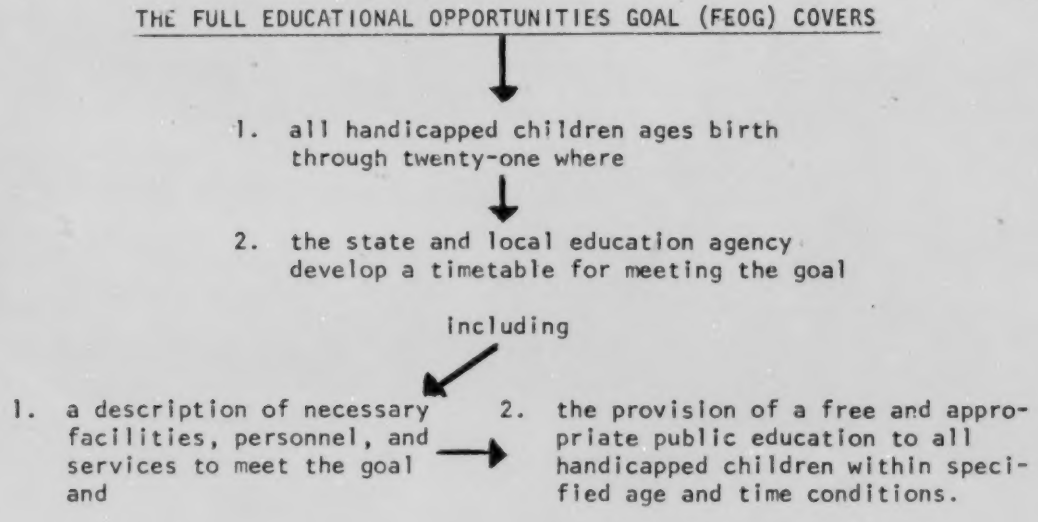
iv) to the maximum extent practicable and consistent with the provisions of Section 6012 (5)(b), the provision

(52) of special services to enable such children to partici-
(53) pate in regular educational programs;
(54) D. establish a detailed timetable for accomplishing the goal
(55) described in Subclause (C); and
(56) E. provide a description of the kind and number of facilities,
(57) personnel, and services necessary to meet the goal described
(58) in Subclause (C);

THE GOAL OF FULL EDUCATIONAL OPPORTUNITIES

The full educational opportunities goal (lines 2 and 35) is on the surface very much like the provision requiring a free, appropriate public education (lines 8 and 42). These two provisions are very different in their implications for urban administrators.

The "full educational opportunities goal" is a broader more encompassing term. For purposes of discussion it might appropriately be viewed as an umbrella which covers several important components including the requirement of a free and appropriate public education. One way to look at this idea follows:


THE FULL EDUCATIONAL OPPORTUNITIES GOAL (FEOG) COVERS
1. all handicapped children ages birth through twenty-one where
2. the state and local education agency develop a timetable for meeting the goal
including
1. a description of necessary facilities, personnel, and services to meet the goal and
2. the provision of a free and appropriate public education to all handicapped children within specified age and time conditions.

A number of other conditions are to be met by the state and local education agencies under this umbrella provision. A review of these provisions along with several important considerations for the urban special education administrator would be useful.

FULL EDUCATIONAL OPPORTUNITIES GOAL - CONDITIONS AND CONSIDERATIONS

1. The Full Educational Opportunities Goal (FEOG) is an absolute goal toward which each state must target. The goal, however, will never be reached absolutely, i.e., there will always be handicapped children in a state between the ages of birth and twenty-one who are not reached by special education services (unserved) or who are not adequately served (underserved) for one reason or another.
2. This full educational opportunities goal requires that states make a commitment to the future of their handicapped children in terms of developing a long range plan to meet the full service goal.
3. Complying with this goal will not be based on the number of handicapped students a state serves, rather compliance will be a function of the state's documented commitment to ultimately reach full and comprehensive educational services for those currently identified handicapped students and all future identified handicapped students.
4. Complying with this goal assumes that state and local districts will meet the legal requirements of the Free and Appropriate Public Education provision. These legal requirements include:
   a. Services to all children ages 3 to 18 by September 1, 1978, and ages 3 to 21 by September 1, 1980. These age ranges apply only if consistent with the state's law for students ages 3 to 5 and 18 to 21. If for example, the state law only requires services

to handicapped students ages 5 to 18, than the state law takes precedent.

b. The requirement that the state must first serve all handicapped students not receiving an education; and, second, serve all handicapped students who are underserved in their current program.

c. That such services be provided at public expense without charge to the parents.

d. That parents not be charged for room and board costs when the local district places the student in a residential facility because a program in the local district is not available.

e. That the student be provided services which allow, (whenever possible) participation in regular education programs.

f. That a comprehensive system of personnel development for regular and special education instructional and support staff be initiated.

g. That parents and/or guardians participate in the development of such services.

h. The notion that a free, appropriate public education is a basic civil right under the due process and equal protection clause of the XIV Amendment to the U.S. Constitution. In this circumstance, a free and appropriate public education would be required with or without Public Law 94-142 funding.

i. That such services are provided in conformity with an individualized education program.

j. The delivery of such services is consistent with the standards of the state educational agency.

Obviously, the Full Educational Opportunities Goal is far reaching in its implication for the operation of urban special education programs.

There are many variables administrators will need to consider as they plan for the implementation of the law at the local level; several are included here for your consideration.

IMPLEMENTING FULL SERVICE IN URBAN AREAS - ASSUMPTIONS AND CONSIDERATIONS

A Continuum of Services Delivery System

Public Law 94-142 includes a short statement on the delivery of special education services. A full scale model delivery system for special education instruction is not presented in the law. Special education is defined in Section 4 of the Law as, "specifically designed instruction . . . including classroom instruction, instruction in physical education, home instruction, and instruction in hospital and institution."

This definition translated into a traditional cascade of services model is represented in Figure 1 below.

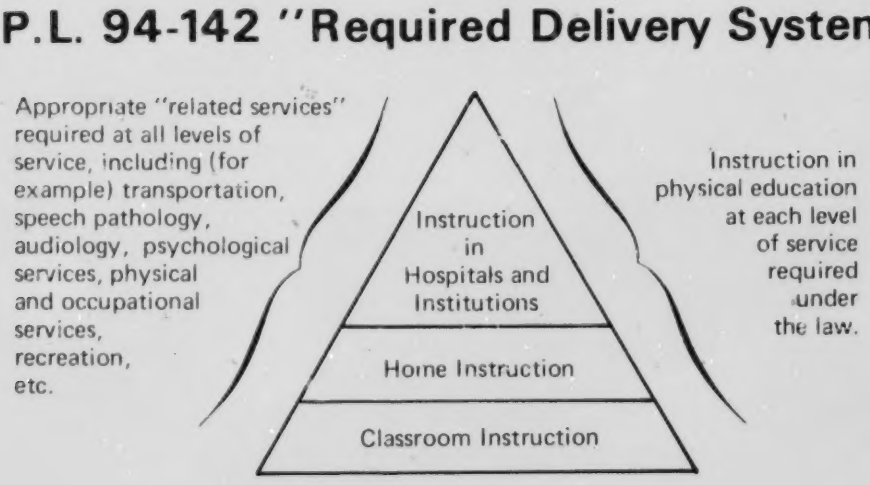

P.L. 94-142 "Required Delivery Systems"
Appropriate "related services" required at all levels of service, including (for example) transportation, speech pathology, audiology, psychological services, physical and occupational services, recreation, etc.
Instruction in Hospitals and Institutions
Home Instruction
Classroom Instruction
Instruction in physical education at each level of service required under the law.

FIGURE 1

It is assumed, however, even with this rather superficial definition of special education services, administrators will be required to provide a more comprehensive delivery system which resembles that shown in Figure 2 below.

Special Education Continuum of Services Model

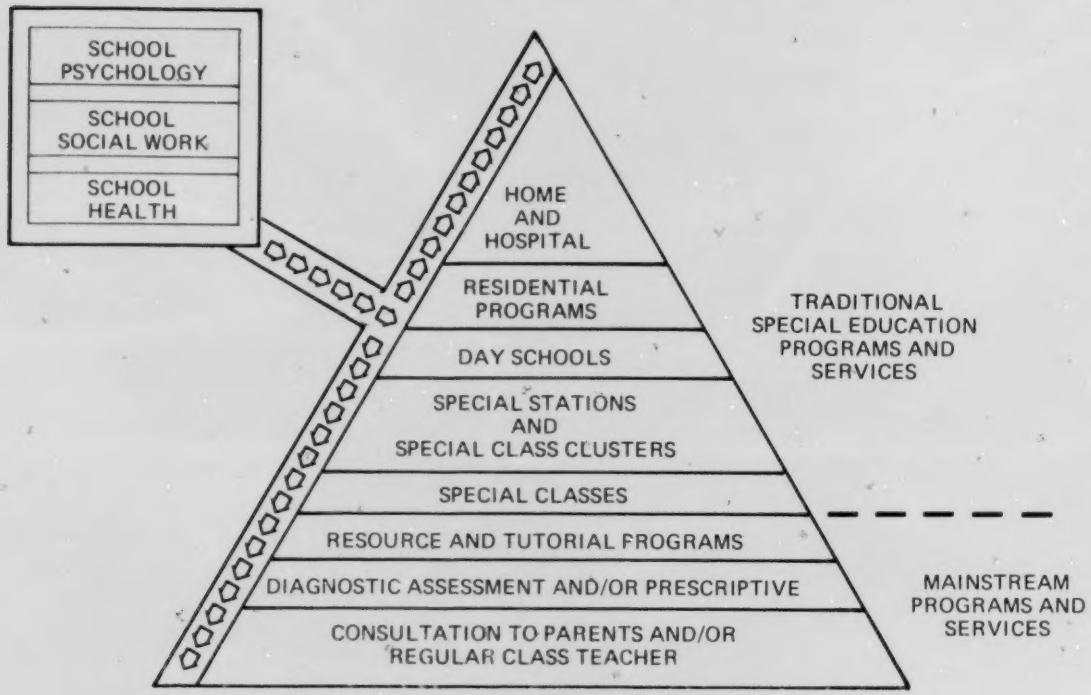


FIGURE 2

Counting for Dollars

As a relevant aside it might be noted that with the system being used to count handicapped children, there is incentive for districts to develop speech and itinerant services. This occurs because equal weight is given for the fifteen, thirty, or forty students the itinerant speech or resource teacher serves and the four, five, or six students the multi-handicapped teacher serves. In this example, during the first year of funding the implications are substantial financially. For the resource

teacher serving forty handicapped students the yield is $2,000 ($50 x 40) and for the multi-handicapped teacher's caseload of six the yield is $300 ($50 x 6). To the author's knowledge, there is no control system for the district having extremely high pupil-teacher ratios in special education resource programs resulting in a high financial yield from P.L. 94-142. District's just initiating special education programs would have great incentive to develop high teacher-pupil ratio resource and itinerant programs and slow the development of low incidence classes. Problems such as these can, of course, be easily remedied by regulations. For example, requiring a "full-time equivaiancy" data for the students reported by each local education agency could uncover excessive pupil-teacher ratios.

It seems, however, wise for USOE to not try initially to develop defensive and, therefore, more lengthy rules and regulations in anticipation of these potential problem areas.

Priorities for Unserved and Underserved

It will be important for special education administrators to develop a system for establishing priorities to serve the unserved and underserved population as these two groups must be fully served before any Public Law 94-142 funds can be used to supplant local special education efforts. It would seem reasonable in urban centers to employ a Public Law 94-142 Coordinator who could carry the responsibility for establishing and coordinating service priorities for 94-142 expenditures. Requirements which are a function of Public Law 94-142 (such as establishing priorities) could justifiably be funded through Public Law 94-142 funds.

Regular and Special Education Interface

A number of urban special education programs are weakened because of the lack of direct representation on the general superintendent's first echelon cabinet or management structure. In these circumstances the special education staffs are represented by an associate superintendent for instruction or pupil personnel services. The personnel development requirements for general and regular education, instructional and support staff and the potential funding increases Public Law 94-142 carries would suggest a need for a high "visibility level" for special education in the district. The coordination of special education and regular education programs especially at the point where these two programs interface, (within the resource programs when regular and special education share instructional accountability) would generally improve the chance for quality service to the handicapped child.

Individualized Education Program And A Free, Appropriate Public Education

The responsibility for documenting a Free and Appropriate Public Education can in large measure be met by having an Individualized Education Program available for all known handicapped children in the area. Although there are other considerations in securing a free and appropriate public education for handicapped children, the IEP is most fundamental and makes this seemingly unreachable requirement accessible.

Gradual Implementation Needed

It is important to note that this piece of legislation is the most significant and far reaching of all previous legislation for the handicapped. The impact it will have on both regular and special education will be dramatic. The Federal Government will probably be cautious not

to push districts into total and immediate compliance. The backlash of such a move would only cause more implementation delays. It is thought that some states might reject Public Law 94-142 monies because of the Law's stiff requirements. Any large scale move by states in this direction could jeopardize congressional funding of this law and unnecessarily punish those states who want to move forward at a reasonable pace in improving service systems for all handicapped children. The strategy of accepting a modest Public Law 94-142 implementation program in the state and local education agencies during the first year and then having them fleshed out and improved over the next several years would be a welcomed posture.

In Conclusion

The USOE Bureau of Education for the Handicapped has conducted public hearings on Public Law 94-142. Testimony from a variety of special interest groups has been taken, and several executives from large metropolitan special education programs have taken time from their demanding schedules to register their concerns at these hearings. Obviously, for urban special education administrators, the pressure of school desegration, teacher negotiations, departmental power struggles, and more leaves little time for the preparation of planful responses in preparing and presenting input to future changes in current P.L. 94-142 rules and regulations, or to organize for legislative action targeted on improvement of the Act. However, as members of the Congress hear from their constituency on this law and BEH staff and state/local administrators work with the rules and regulations, it would be well if the urban special educators made it a special point to be a part of that reshaping process.

Among the points for urban educators to consider as they work toward implementation and toward meaningful modifications in this law and its rules and regulations are these three:

- The Need for Phase-in Periods for Individualized Education Programs. The problems of developing thousands of IEP's in a one-year period are immense. The states should be given authority to allow urban centers a reasonable time frame for gearing up to full IEP status.

- The Need to Allow Flexibility in the Child Count Categories. A number of urban centers have had major legal problems with categorization of children. Moves to decategorize in some states and urban centers have been slowed by the requirement that local education agencies and states report handicapped children in traditional categories. A relation of this requirement by regulation or some modification in the law on this point would ease the problem for states and localities with decategorized special education programs.

- The Need to Allow Flexibility When Involving Parents in the Placement Process. Urban centers serving a heterogeneous population will have varying degrees of success involving parents in the placement process. It is often difficult to involve parents of handicapped students from culturally different and disadvantaged neighborhoods in the evaluation and placement process. This difficulty results from such problems as the parent's fear of legal and quasi-legal processes, our inability as professionals to communicate effectively with these parents,

and the basic logistical difficulty administrators have in implementing complex due process procedures. It is the child who suffers when such requirements cause service delays. Again, it would be helpful to have some phase-in period for the full implementation of these processes.

Most of us welcomed the advent of Public Law 94-142 and its promise of creating a Local - State - Federal partnership in the funding of programs for the handicapped. A careful review of the law itself and the proposed rules and regulations has dampened the initial enthusiam of some. With a reasoned and sincere evaluation of the law's full service provisions by all three levels of government, the law (if adequately funded) can, however, go a long way toward meeting its promise to the Nation's nearly eight million handicapped children.

SECTION B-4

THE INDIVIDUAL EDUCATION PROGRAM REQUIREMENT

SCOTTIE TORRES AND HERTICINA SELF

It is imperative that each administrative decision maker responsible for the implementation of individualized education programs as required by P.L. 94-142 understand the legal basis for the mandate and be able to translate the "letter of the law" into "sound educational practice." This knowledge will support the educational rights afforded each handicapped child.

Prior to discussing the law and the administrative decisions that must be answered, several assumptions are made: First about administrative behavior and, second, about the law itself.

ASSUMPTIONS

1. We are each professional educators committed to the philosophy of providing each handicapped child the right to a free, appropriate public education. To that end, regardless of how comfortable we are with sections of the law, each of us, as administrators, must be committed to the implementation of P.L. 94-142 (CEC Delegate Assembly, 1976).
2. As effective administrators, we must determine the "bottom line" of this law as it relates to individualized education programs; but we must also recognize and strive for "the ideal."

3. We must realize that in striving for the "ideal" individualized education program for each handicapped child, there will be many professionals in our agencies who will try to interpret this law to be more than the law mandates.

There are also assumptions about P.L. 94-142 that need to be stated:

1. There is nothing contained in the provisions of P.L. 94-142 that prohibits any education agency from "going beyond" the law.
2. P.L. 94-142 represents "minimum standards" that each local, intermediate, and state education agency must adhere to as interpreted by Congressional intent (Walker, 1976).

DEFINITIONS

In order to appropriately understand what children must receive an individualized education program, we must refer to the language of the law. Section 602 of the Act amends the following definitions:

> (16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

The key terms in this definition are "specially designed instruction . . . to meet the unique needs of a handicapped child...." Therefore, we know that a child must be eligible according to state policy to be certified as handicapped. Also, the child must receive specialized instruction designed to meet the unique (but not all) educational needs of the handicapped child.

The definition of related services lists those services that are supportive to special education.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

It is important to note that related services are those "required to assist a handicapped child benefit from special education...." Any related services provided for a child must, therefore, assist and support the special education that child will receive.

The definition of a "free, appropriate public education" further delineates in Subsection D the responsibilities of agencies to provide an individualized education program as part of the guarantees that each handicapped child is in fact receiving a full appropriate public education.

(18) The term "free, appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the state educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the state involved, and (D) are provided in conformity with the individualized education program required under Section 614(a)(5).

THE INDIVIDUALIZED EDUCATION PROGRAM

The language of P.L. 94-142 is very specific in describing how an individual education program is to be evolved. However, within the "specifics" the generalities immediately trigger direct administrative decisions that must be made prior to the design or restructure of any management system within the agency to comply with this section of the law.

The Council for Exceptional Children stands firm on the interpretation of individualized education programs as "programs" rather than "plans." There currently exists much confusion on the part of well meaning professionals, parents, and others as to the intent of the law. P.L. 94-142 clearly mandates "programs" and any attempt to interchange the word "plan" represents a gross misinterpretation of the law. While the distinction may at first glance appear to be a subtle one, the exploration of the language of the law clearly demonstrates the distinction. With the idea of "program" rather than "plan," a review of the definition of individualized education programs supports this distinction. In addition, a different set of decision points is raised for each administrator.

> (19) The term "individualized education program" means a written statement for each handicapped child developed in any meeting.

The language is clear. Individualized education programs must be written and must be for each handicapped child. The term "developed" is open for interpretation and will be further explored in this document. "In any meeting" may in fact mean that "the meeting" is not concluded until all statements are developed.

Components of the Individualized Education Program

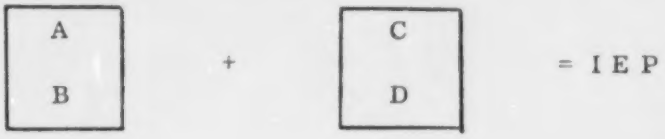
The components of the individualized education program are specifically set out in the law. The minimum requirement set forth requires that the written statement shall include:

1. (A) a statement of the present levels of educational performance of such child
2. (B) a statement of annual goals, including short-term instructional objectives

3. (C) a statement of specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs

4. (D) the projected date for initiation and anticipated duration of such services, and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

In order to conceptualize the difference between a "plan" and the requirements of an individualized education program specified in P.L. 94-142, the components of the program might be depicted as follows:



The distinction is visually possible. The statements of present levels of performance (A) and the annual goals (B), including short-term objectives, establish the background for the educational needs of the child. After these steps, the education agency states the specific educational services (which is a commitment by the agency to allocate resources, i.e., human, fixcal, and/or material) to be provided (C) and the extent the child will be able to participate (D). Once the education agency commits the needed resources, the difference between "planning" and providing an individual educational "program" is obvious. "Plans" suggest a readiness condition; programs require commitments and implementation.

Certainly, planning is a vital part of any program. Administrators must be alert to the subtle difference. What P.L. 94-142 requires at the meeting in terms of the development and documentation of an individualized education program is less complex, requires fewer professional staff, and reams less of Xerox'd information than do plans. Good planning on a daily and weekly basis must occur. Those professionals

responsible for implementing the child's IEP have a professional responsibility not only to adequately plan for the child's education, but also to inform the parents as to the periodic progress of the child. This is just good educational practice that most of our professional staff currently engage in.

The issue that administrators must deal with is the interpretation of an individualized education program according to P.L. 94-142, and translate that interpretation into administrative and other professional responsibility.

Who Must Attend?

The language of P.L. 94-142 sets, as a minimum standard, the mandate that at least three people and "whenever appropriate" the child attend the meeting to develop the individualized education program. The law states required attendance as:

> ... a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents, or guardian of such child, and, whenever appropriate, such child.

One of the first administrative decisions must be to ascertain the members of the meeting. Organizational structures vary and, according to the specific needs of the child, the term of people may be selected on a building basis (the La Casita School); by level of student (elementary, secondary); by geographic organization of the school district (Area I, II); and/or by district itself.

To aid administrators, emphasis must be placed first on the selection of the representative of the education agency. This person may logically be the administrator of special education or his representative

which might be a categorical disability specialist or other special education supervisor. Or, it may be logical in some systems to work with the building principal as the local agency representative.

The "teacher" may be one or more persons having direct responsibility for implementing the child's educational program. In many instances, the related special support services staff will have important input into the decisions affecting the child's individualized education program.

The language of the law is clear that a parent or parents must be present during the development of the individualized education program. But what if a child does not have parents. While the procedural safeguards section of P.L. 94-142 provides a means for a surrogate system, education agency administrators have the responsibility to determine how this mechanism will be put into place.

The next critical administrative decision pertains to the language "whenever appropriate, such child." When is it appropriate for the child to attend? Will age determine this? Will the categorical disability of the child serve to admit or exclude student participation? What about the parents concerns? And, what about the child? Each of these questions present difficult decisions to be made by an administrator. There appear to be no clear-cut rights or wrongs. However, what is clear is that each education agency must develop clear written policy statements which specify the criteria for determining in which instances it is appropriate for the child to participate in the development of the student's own individualized education program.

REPORTING REQUIREMENTS

Review of additional sections of P.L. 94-142 reveal the identification of additional responsibilities relative to IEPs. An analysis of the components of the law and the administrative decisions continues in the next sections.

Section 612 (Eligibility)

This section requires that each education agency maintain records of the individualized education program for each handicapped child. The statute further requires that IEPs be "established, reviewed and revised" at least annually. Administrators will have to define procedures to minimally determine how many copies of each child's IEP will be required, who will keep the copies and where they will be stored. The logistics of "moving paper" in an urban setting are great but not impossible once a system is established.

Section 613 (State Plans)

The implication of this section for local and intermediate education agencies regarding IEP emerge when one realizes that this section of the statute requires the state education agency (SEA) to submit a written plan to the Commissioner which shall:

> (4) set forth policies and procedures to assure--(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the state or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such state.

Because the SEA must outline policy and procedures which will impact on the manner in which local and intermediate education agencies develop IEPs for children in private schools and facilities, each local administrator of special education must assume greater responsibility towards forming and defining realistic policy and procedures. The SEA plan should in fact reflect a composite of good policy and practice at the local level. Inputs into the design of policy and procedures relating to IEP as set forth in the state plan should be two directional: first, going "up" from the local level and then "down" in written form from the state level.

Section 614 (Local Applications)

This section spells out two components of the local application that must specify the local policy and procedures relative to individualized education programs. Subsection (3)(A) has implications for the kind of data that local or intermediate education agencies will have to collect and report. The statutory language requires the application to:

> (3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the state educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part;

Probably the most difficult component of P.L. 94-142 for administrators to implement is found in the following statutory requirement of the local application:

> (5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program of each handicapped child at the beginning of each school year and will then review and, if appropriate, revise its provisions periodically, but not less than annually.

The implications are great for educational management systems in an urban setting that must gear up to accommodate thousands of individualized education programs at the beginning of each school year. As a direct response to this component alone, administrators of special education should continue to accelerate their agencies' efforts to develop individualized education programs for each handicapped child. Then, in September, 1978, the major thrust of effort will be in the "revising" rather than "establishing" IEPs.

SUMMARY OF ADMINISTRATOR RESPONSIBILITIES RELATED TO IEP'S

With a firm belief that each handicapped child has the right to a free, appropriate public education, each administrator of special education at the local, intermediate or state education agency level must develop appropriate written policy and procedures to guarantee an individualized education program for every handicapped child. This sets up at least the following administrative responsibilities:

- Each administrator must have thorough knowledge of the IEP related requirements of P.L. 94-142.
- Each administrator must be able to translate statutory requirements into educational and administrative practice.
- Each administrator must reach consensus as to the most effective organization in their district for developing individualized education programs for each handicapped child.

A MANAGEMENT SYSTEM FOR IEP IMPLEMENTATION

This section of this article will attempt to suggest a few management strategies which might be helpful, and will focus in particular on the definition and role of the team effort necessary to accomplish P.L. 94-142 requirements related to IEP written plans.

Public Law 94-142 specifically states five areas that must be addressed in any plan. Although these were stated earlier in this article, they are restated below because of their importance, and are subsequently discussed in terms of specific implementation strategies. These areas are:

A. A statement of the present levels of educational performance of such child,

B. A statement of annual goals, including short-term instructional objectives,

C. A statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs.

D. The projected date of initiation and anticipated duration of such services,

E. Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

These five areas should be thought of as minimum requirements. Additional requirement areas will most likely be included in the regulations adopted by each state. Since these requirements may vary from state to state, suggestions which follow will concentrate on the five requirements listed above. However, some additional resources which might aid in gaining greater commitment at the local level will also be suggested.

In the first few lines of the P.L. 94-142 definition of the IEP can be found wording which legitimatizes the concept of a team as the decision making body at the local level; a team having the power and responsibility to develop an IEP for each handicapped student and to establish guidelines for implementation:

> The term "individualized education program" means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child . . .

The concept of a team is of utmost importance when designing an IEP to meet the total educational needs of a handicapped child. As we know, all professionals have specific areas of expertise and, with these multiple areas of expertise pooled in an organized way, the sum of the whole is much greater than any of the individual parts. Assumptions behind the team concept are (1) that the planning and implementation phase at the local level will concentrate on both the needs of the child and the extended capabilities of local program options, (2) will involve input from experts in the field, and (3) all team members will share responsibilities in implementation of the total IEP process.

The minimum team membership, as stated in the law, includes a representative of the LEA, teacher, parent or guardian, and child when appropriate (see Figure 1). However, in order for the team to develop an IEP which will address the total educational needs of the child plus accomplish other tasks as stated above, a multi-disciplinary effort is needed. Therefore, other necessary personnel such as the following should be added to the minimum team membership:

- psychologist
- speech/language person
- occupational therapist and/or physical education teacher
- school social worker and/or counselor
- special education administrator
- representatives from community agencies

See Figure 2 for a representation of this expanded team model.

The key to a successful team is that its composition is not fixed and its membership at any given time depends on the type of information needed to plan an appropriate program for the child being discussed. Also, by including those persons potentially responsible for carrying out the plan as team members a more appropriate, practical and feasible plan is assured, plus the chance of greater commitment to implementation is enhanced.

The following pages discuss in more detail each of the five statements that must be addressed in the IEP, recommends designated key people who should be involved in each area, and lists their responsibilities as members of a multi-disciplinary team.

A. A Statement of the Present Levels of Educational Performance of Such Child.

This statement should be based on an accumulation of information which provides a broad picture of the total child. The information should be obtained from a current evaluation, using test (criterion-referenced as well as standardized), observation (formal and informal), work samples, self-report information, parental information, medical history, school record, and daily data records. There should also be a statement of the child's strengths and weaknesses in the area of physical, cognitive, language, social-emotional development, and environmental conditions.

P.L. 94-142

Minimum Requirements for the Committee

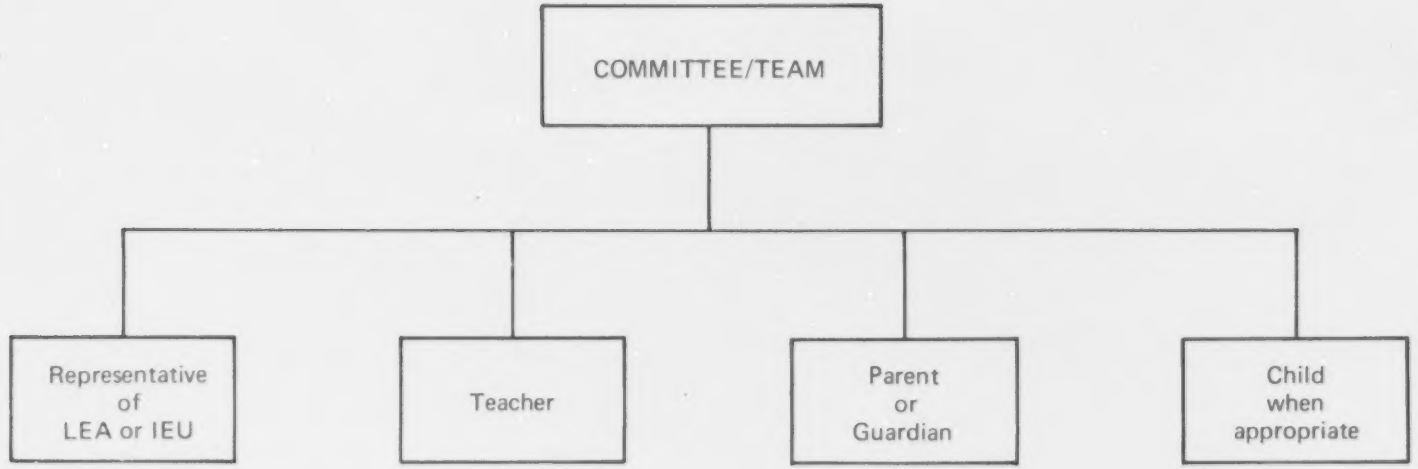


FIGURE 1

Expanded Committee/Team Membership

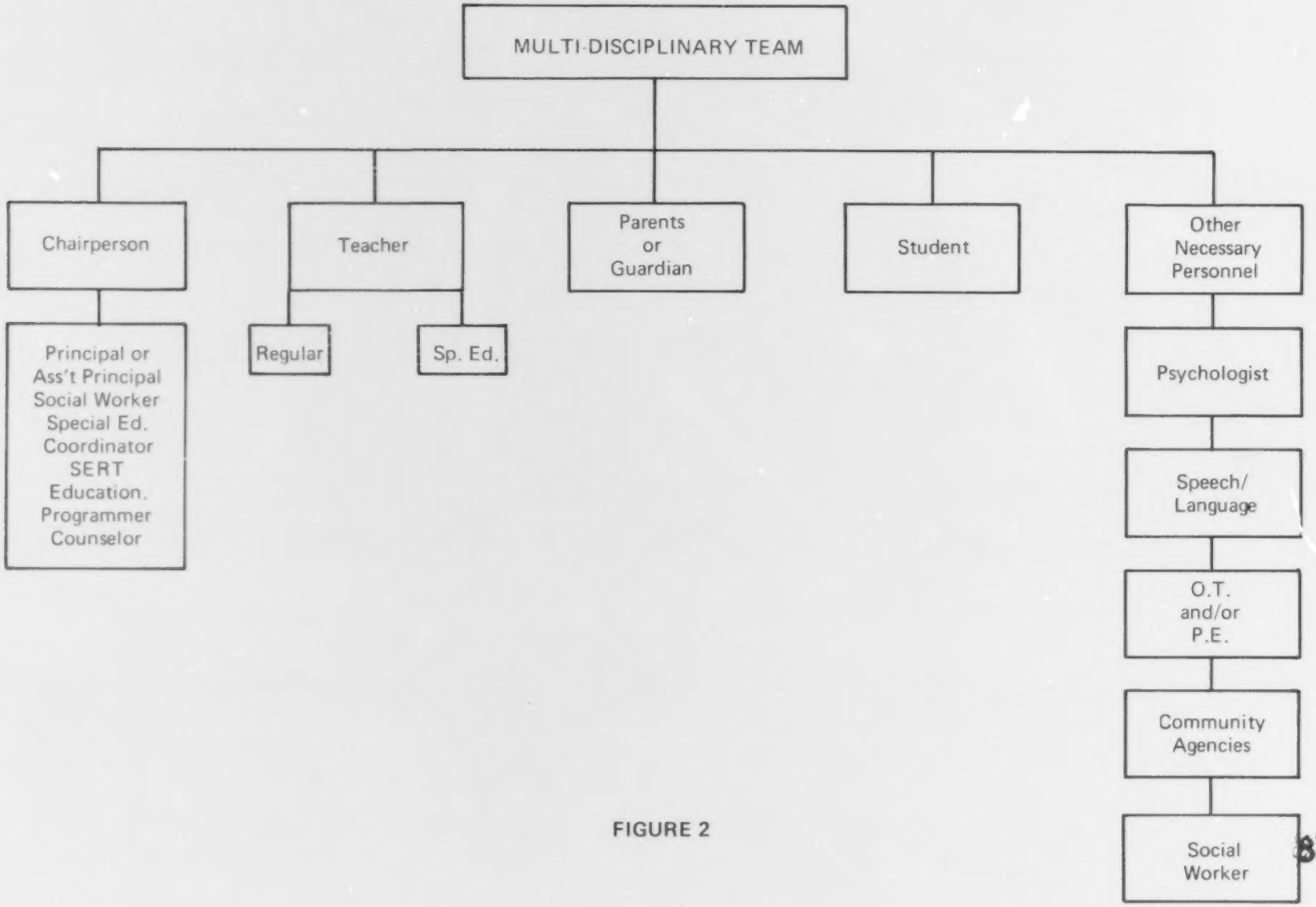


FIGURE 2

Several key people involved in developing this statement are:

Key People	Responsibilities
Administrator	Gather all pertinent information Coordinate the evaluation process through individual assignments
Psychologist	Cognitive performance assessment - psychological testing - performance discrepancies - learning style Affective performance assessment - personality scales
Classroom Teacher	Academic performance assessment - criterion-referenced testing - informal observations - work sample - daily data records Affective performance assessment - self-concept inventories - self-help skills Environmental social performance assessment - classroom membership role - interpersonal relations
Special Education Teacher	Cognitive performance assessment - testing (standardized and criterion-referenced) - observation (formal and informal) - learning style
Physical Education Teacher	Psycho-motor performance - gross motor - fine motor Affective - self-concept - peer relations

B. A Statement of Annual Goals, Including Short-term Instructional Objectives.

This statement should define what a child is expected to accomplish on an annual basis as well as over several shorter periods of time within each year. The annual goals should reflect the desired expected growth and development of the total child, while the short-term objectives outline a map of interim targets for reaching those goals. The goals and objectives should be measurable, attainable, and compatible with the child's stages of development. They should take into account all facets of development and guard against overemphasis in one area to the neglect of important areas. In addition, they should also reflect the learning style most appropriate for the child.

The key people who should be involved in developing this statement are:

Key People	Responsibilities
Teacher(s) Classroom and Special Education	- evaluation of the classroom environment - using test information to identify areas of strengths and weaknesses - input in setting realistic goals and objectives - identify child areas of interest
Psychologist	- using test information and/or observation to define performance discrepancies
Parent	- identify child's interest in non-academic setting - using home environment to identify areas of strengths and weaknesses

C. A Statement of the Specific Educational Service to Be Provided to Such Child and the Extent to Which the Child Will Be Able to Participate in Regular Education Programs.

This statement should define the environment in which the educational program will be implemented. This definition should specify primary placement (regular or special education), amount of time to be spent in each, plus a statement justifying the placement as the least restrictive alternative.

The key people involved in developing this statement are:

Key People	Responsibilities
Administrator	- identify types of services available (building, area, district) - input in decision of placement - insure due process safeguards - assignment responsibilities for IEP
Classroom Teacher	- identify classroom services options - input into placement decisions
Special Education Teacher	- identify special education services options - input into placement decision
Parent	- input into placement decision - to give consent in placement

D. The Projected Date of Initiation and Anticipated Duration of Such Services.

The team must specify a tentative date for initiating the student's program. Then, using the criteria for mastery of the goals and objectives as stated in the IEP, the team must make a provision as to the duration of the proposed placement.

The key people involved in developing this statement are:

Key People	Responsibilities
Administrator	- availability of program options - knowledge of the required amount of service per day - length of special program options - establishing timelines - access alternate resources
Teacher(s) Classroom and Special Education	- projected date of implementation - input on amount of time necessary to carry out objectives

E. Appropriate Objectives, Criteria and Evaluation Procedures and Schedules for Determining, On At Least An Annual Basis, Whether Instructional Objectives Are Being Achieved.

Any program of excellence has a built-in system of evaluation which specifies criteria for mastery of the goals and objectives and schedules for review. A systematically scheduled case conference with the team, on at least an annual basis, to determine whether or not the child's program is appropriate and services are effective, is a minimum requirement of P.L. 94-142.

The key people involved in developing this statement are:

Key People	Responsibilities
Administrator	- identifying evaluation procedures - identifying schedules for monitoring and evaluating objectives - assign responsibility for monitoring and evaluating objectives - identify a process of re-convening the team - identify a means of communicating among the team members
Teacher(s) Classroom and Special Education	- identify appropriate criteria for mastery of objectives - input on schedules of evaluation - input on evaluation procedures - implement evaluation plan - collect data (daily, weekly, monthly) - monitor objectives
Parent	- give approval of and reaction to criteria and evaluation procedures for objectives - give input on the schedule of re-convening the team

Figure 3 represents these five IEP requirements in an implementation model which uses all of the above information. The decision making process begins at the team meeting and should end with the team. It should be the responsibility of the team's chairperson, or designee to gather all pertinent information concerning the student. This can be done very effectively by assigning responsibilities to qualified team members who will do the actual evaluation to determine the student's present level of functioning.

Using all available information gathered on the student, the team must specify the student's placement (regular and/or special education), the amount of time each day to be spent in each, the annual goals,

responsibility for carrying out the goals, the projected date of beginning and ending service, and dates for team reviews.

The responsibility of developing and carrying out the next three steps in the process belongs to the specific personnel assigned by the team. They must specify appropriate short-term objectives, identify materials and strategies to be used in developing these objectives, establish criteria for mastery of the objectives, and maintain frequent communication with other team members.

The final or annual evaluation is again a meeting of the team and all other personnel involved in the student's IEP. The end results will be to summarize available data and make decisions which will continue to provide appropriate educational opportunities for the student.

SUMMARY

In summary, this article has attempted to review specific P.L. 94-142 IEP-related provisions, has suggested some specific administrator action requirements necessary to implementation of the IEP requirement, and has reviewed the five major required areas for developing written IEP's in terms of team action. In addition, a process model for implementation of all five steps was outlined and briefly discussed.

Obviously, the commentary and suggestions made require on-line modification for application to local settings. Clearly, the answers to successful implementation of P.L. 94-142 and the provision of an individualized education program for every child are not going to appear overnight. The real answers are those developed "at home." The tasks are complex and arduous, but with the continuation of those steps many special education administrators are now taking to learn about and develop necessary programs and management systems, the larger goal of an IEP for every handicapped child is clearly reachable.

Model of IEP Implementation

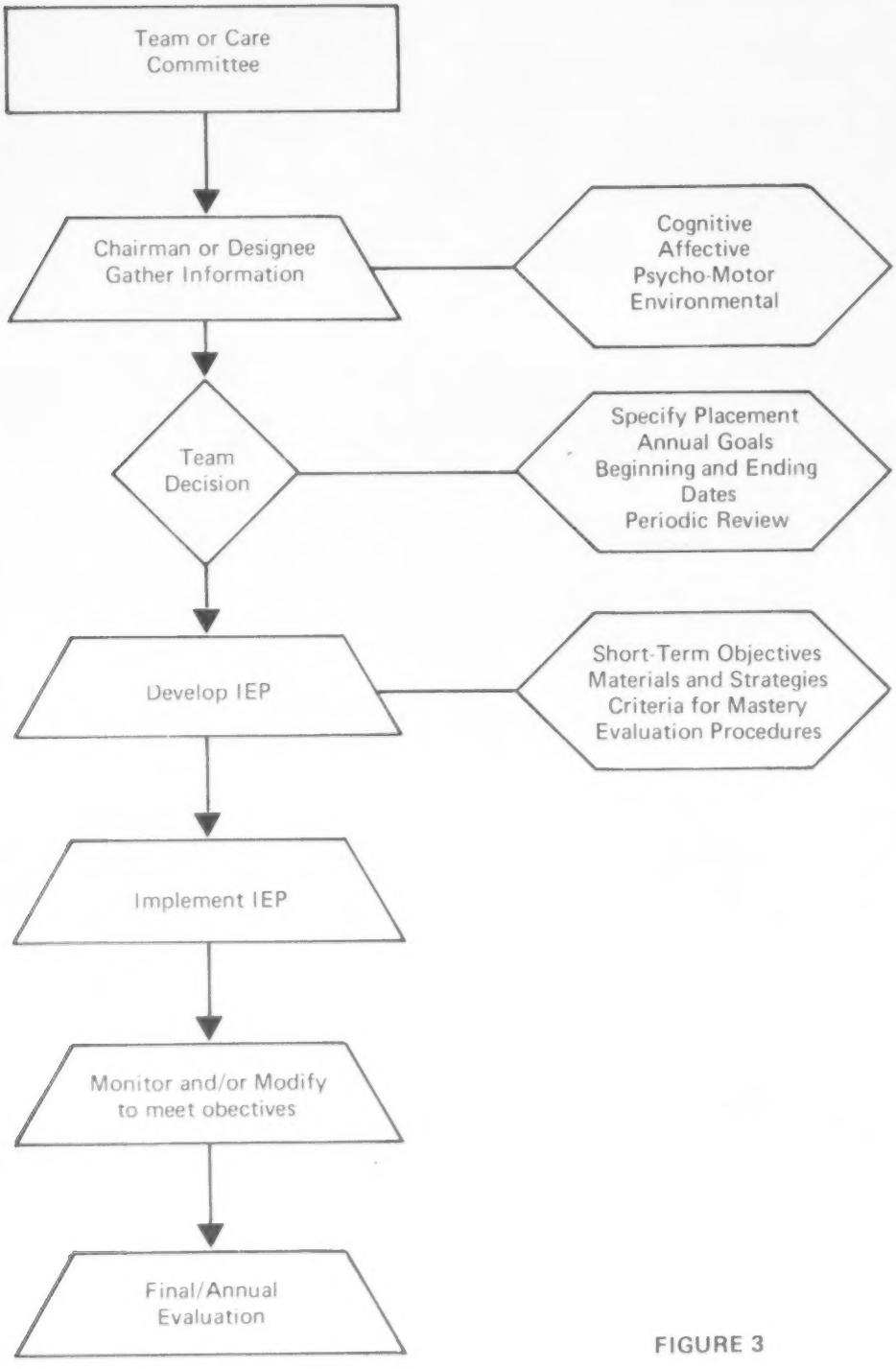


FIGURE 3

SECTION B-5

NON-DISCRIMINATORY TESTING AND EVALUATION SYSTEMS

IRIS BUTLER

While American society pays lip service to the idea that all are created equal and ought to have a chance to realize the "American Dream," it is demonstrably clear that certain racial and ethnic groups do not have an equal opportunity in our society. A great deal of effort has been expended since 1955 toward the goal of bringing black children's scholastic achievement to the same level as that of white children's. By and large, the effort succeeded poorly, or only for a few very expensive small programs. In an article in the Harvard Education Review in 1969, Professor Arthur Jensen, of the University of California, summarized many past studies and offered as an interpretation for these results that there were innate and genetic differences in intelligence between black and white population in the United States. Jensen suggested that blacks were deficient to whites in abstract problem solving ability, but equal to or superior to whites in rote memory. He further proposed that educational programs be tailored to fit this profile of intelligence.

Jensen's statements once again opened up social controversies that were not original with Jensen. One is that intelligence is largely hereditary; and, therefore, black children perform less well in the academic arena than white children, regardless of their environmental conditions. To say that a trait is largely hereditary does not negate

the fact that environmental factors play a role and this role can be significant. Educators must address this point.

Some of the significant environmental variables that influence intelligence are:

1. The child's pre- and post-natal nutrition.
2. The behavioral and academic expectations of the child's parents, teachers and himself.
3. The curriculum content at each grade level.
4. Specific techniques for intellectual evaluations and their subsequent interpretations.

There are many other variables, to be sure. However, there is research data to indicate the importance of the above factors.

If we overemphasize the hereditary aspects of intelligence, then we can easily overlook the environmental effects. It would be easy, particularly at a time of shrinking budgets, to assume that little effort need be expended when the results shows a little change in a child's IQ score. It would also be easy to assume that a child with a high IQ could be expected to do well in any environment, regardless of what happens in that environment, because they are so bright. It is often assumed that IQ tests measure inherent ability or total intelligence. Are we willing to endorse such conclusions?--Not publicly, maybe, but this assumption can influence our assessment of students.

There is a second social controversy related to the hereditary-environment issue. Science fiction writers sometimes picture a world in which a few super bright people control the machinery which does the work, while the dull-normal majority of people are held in a state of somnolence. Are we segregating students in classes on the basis of

intelligence? Is there such a trend in our schools? Professor Richard Hernstein of Harvard University stated at one time his belief that there may be. He cited that a number of the institutions of our society influence us toward assortive mating for intelligence. Universities are good examples of this, in which post adolescents of both sexes, selected for intelligence, have the opportunity to spend time together. Hernstein further stated that there might be rewards in a technical society only for those bright enough to manipulate the machinery. Present day educational efforts toward a least restrictive alternative in public school classes as required by P.L. 94-142 may be reflective of an attempt toward more intellectual integration of students and away from exclusiveness.

A third controversy is bothersome. One of the greatest deficiencies of intelligence testing today is the lack of a theoretical basis, according to Drs. Hunt and Lunneborg from the University of Washington. Much of the controversy of testing today arises from the fact that we have been using measurement instruments without adequate theories of cognition. Further, many tests are biased and data wrongfully generalized to unstandardized populations. This criticism is familiar by now to most people, though we may ask what action is being taken to prevent this from happening.

What do these controversies mean in relation to the new Federal Law 94-142? Given the limitations of our present assessment techniques, is it possible to evaluate a child's current functioning in a nondiscriminatory way and formulate a program to best meet his or her needs based on this assessment?

First, what is intelligence? What are we trying to measure with some of our present assessment tools. Intelligence refers to the mental

power of an individual. The pattern of intellectual growth is often predictable by age 7 or 8, and is assumed to continue through adolescence and then, given good health, remains constant through advanced age. Intelligence is particularly affected by physiological factors in prenatal life and in early childhood. Social and familial practices at this time are also of great importance. Because intelligence is multifaceted, it cannot be summarized by stating a single IQ score, for this does not adequately describe an individual's cognition, but we have used this shorthand in the past.

Intelligence tests as we have today do not measure a person's intelligence completely. They do measure a person's success in school (not without some margin of error), and to some extent his success in adulthood. The results of scores on intelligence tests are most accurately generalized to the population on which the test was standardized--the reference group. And again, the standardized scores tell us how much a person varies from the average performance of his age group referents.

The controversies previously mentioned are partially addressed by the new Federal Law 94-142. Specifically, injustices in assessment and program placement, particularly for racial and cultural minorities, are redressed. Guidelines are specified that attempt to make for a more equitable public system with checks and balances and parent involvement. This kind of statement has been overdue.

Some of the specifics of the regulations include:

1. The administration of tests must reflect the abilities of students, rather than their deficits.
2. Administration of tests must be in the language of the child or their mode of communication.

3. When an IQ test is used, placement decisions must be based on additional data, i.e., behavioral.
4. No single test or type of procedure should be used as the only criteria for evaluation or placement.
5. Test interpretations should be done by the examiner of the child.
6. Assessment interpretation and placement decisions need to be made by a team of individuals.
7. Periodic comprehensive assessment and program revision are necessary.

While this list does not include all the specifics of the new regulations, it is illustrative of the point of redress of past grievances. No longer will it be acceptable for one person to administer one test to a child, whether or not that child was in the standardizing population, and make a unilateral decision about the educational placement of that child, leaving the child to languish without specified review for progress. We will have to look at children more realistically, more globally. We will have to look at their test scores, their behavior in school and out of school, in various roles. We will have to emphasize a child's skills in order to make an adequate educational plan and synthesize information from various sources to form a comprehensive picture. This is a time-consuming and costly process. Let us examine some alternatives for accomplishing this goal.

As has been pointed out by the National Education Association, the popular press, the courts, civil rights organizations, state and federal agencies, many of the tests that are presently in use in and of themselves do not fully consider the linguistic differences of minority children. The response of the testing industry to criticisms of this kind has been the translation of existing tests into, say Spanish, in an

attempt to construct culture-free tests. There are problems with this approach - 1. Regional differences in the language make a single translation difficult. For example, toston means quarter or a half dollar to a Chicano; it means a portion of a banana squashed and fried to a Puerto Rican. 2. Dialectual differences render a monolithic translation less than ideal. In some areas of Texas, the language common to many children is a combination of Mexican and Texas English.

Let's look at the total assessment process:

First of all, the assessment process begins before a child is measured on any standardized test. An informal assessment may be done by the teacher in the classroom, the social worker, a parent. Their informal assessment may have a strong influence on the way they respond to a child, the expectations, the privileges, etc., accorded him. If the frame of reference of these people is limited, then they probably will make restricted judgements about the child's behavior. Is their knowledge of child development sufficient? Their understanding of the cultural norms sufficient? Their knowledge of physical handicaps sufficient so that they are able to see this child as an individual, a human being with the same basic strivings for acceptance and self-fulfillment, the same need for discipline and responsibility? And at the same time are they able to realistically see the deficits the child might have and accept some alternative educational plans to meet these needs?

I feel that it is incumbent upon Special Education to initiate and meet some of these educational and human needs of personnel in the mainstream of education through the variety of techniques currently available. I have data from the Minneapolis School District that clearly indicates the problems of overidentification of children by race and by

sex for Special Education services. The referral of minorities is 14 percent greater than their proportion in the school. Males are referred 2:1 over females. These data are accurate as of June, 1976. During these past three years, a Task Force on Special Class placements was appointed by the Special Education Department to evaluate all students in the Minneapolis Schools who were being served in EMR programs and the same over-representation by sex and by race was evident.

The second phase of the assessment process is the more formal, testing part and it is toward this area that much criticism has been leveled, at the tests, the uses to which the tests are put, and the testers.

The critical question here is - what are our objectives for testing? What different levels of information do we need to know about the student? One level of information about students that tests help answer is for funding. State and Federal agencies are interested in, or mandate some kind of evaluations. There is reimbursement of monies for students in special education programs, so there is a need to have some objective way of determining who these students are.

A second objective of assessment is the individual student need determination. What are a particular student's strengths, weaknesses, learning styles--the specific kind of information that is necessary to effective teaching and learning - the main business of the classroom?

A third objective of assessment is an evaluation of the program effectiveness. Can we now look at the kinds of tests that we have available and the kind of procedures that we are now using, and develop a system that will address itself to the many students and the pluralistic community that we now have to cope with in the public schools?

One partial answer is to do criterion-referenced testing. This can be useful for both program evaluation and the assessment of individual pupil needs. By criterion-referenced testing, I refer to the testing of exactly what is being taught in a curriculum and scoring in levels of mastery that are not based on age, as are achievement test levels. The Evanston, Illinois School District uses this sytem to measure student achievement. The objectives and the content of this kind of testing can be nondiscriminatory. It is certainly nonstandardized and relevant to a specific group which may be multiracial and multicultural. If this method of assessment is used, then one has to be concerned with whether or not teachers' performances are to be evaluated on the basis of student performances. Criterion-referenced testing can be used this way for system accountability.

Let us mention some of the cautions related to criterion-referenced testing that were noted in an American School Board Journal:

1. The criteria need to be a part of the local school objectives.
2. We are measuring only the simplest tasks. Higher level mental competencies are difficult to isolate and quantify.
3. Test questions need to relate to the mastery of very specific tasks being taught in the curriculum.
4. Teaching objectives on an individual basis and testing them on an individual basis, because students move at individual paces.
5. Do not overlook the broad experience of a teacher or stiffle creative teaching techniques with performance objectives that are too rigid.
6. Is is possible to generalize from the mastery of one set of objectives on a criterion-referenced test to any kind of future success? If a student can master the objective within Unit A, does that mean he will then have a chance of success on Unit B or Unit C?

7. On what basis do you decide on the minimal competency levels? Is it to be on a percentage basis, 80 percent and then you move on to the next unit? Indepth inservice training is more important.

Jane Mercer of the University of California, Riverside, has developed a System of Multicultural Pluralistic Assessment (SOMPA). This system was designed to measure the current level of functioning of English-speaking children from anglo, latino, and black cultural backgrounds. According to Dr. Mercer, this method also gives an estimate of learning potential of children and is nondiscriminatory. These measures have been standardized on 700 children 5 to 11 years old, and representative of the population attending the public schools of California from that ethnic group.

SOMPA is based on a triangulated model system, the medical model, social system model, and the pluralistic model. Each model defines abnormal behavior in a slightly different way and has a different set of underlying assumptions. Therefore, when using this system, we are looking at a child from several different angles and thereby reducing the margin of error in behavioral assessment.

The medical model defines abnormal by identifying symptoms of pathology. The assumption is that symptoms are caused by some biological condition and that the sociocultural background is not relevant to the diagnosis and treatment. For example, the symptoms of measles are the same for all individuals, regardless of their race, social class or religion. The primary focus is on deficits. There is little differentiation among "normals" because the normals consist of the large mass of persons who have no symptoms. Scores on tests for individual persons within the medical model can be interpreted without reference to their

cultural background. They are not culture-bound. The following tests within the SOMPA model meet the assumptions of the medical model: Physical Dexterity Test, Bender-Gestalt, Health History Inventory, visual acuity, auditory acuity, and the weight-by-height ratio.

The social system model defines abnormality as behavior which violates social system norms. There are many definitions of normal. Each role has its own set of expectations. To judge whether behavior is normal or not, we need to know - the system in which the child is functioning, the role the child is playing, the expectations others in the system have for the behavior of persons playing the role, and information about the actual behavior of the child. With this model there are assumptions of both assets and deficits of a person. Measures of SOMPA which meet these assumptions are: WISC-R and the Adaptive Behavior Inventory for Children (ABIC). Dr. Mercer felt that the intelligence test met these assumptions because it was designed to measure how effectively a person fit into the student role in the social system of the school. The ABIC is a measure of the child's role behavior within the family, community, peer group, non-academic school roles, self-maintenance and earner-consumer roles from the viewpoint of the family. Test scores form a normal distribution, rather than a truncated distribution as in the medical model. Social deviance is a judgement about specific behavior and it is not appropriate to think of the deviance as being "in" the child or to think of the deviance as existing undiagnosed. Since the political process defines what behavior is deviant, cause and effect reasoning is inappropriate from the social system perspective.

The pluralistic model assumes that all tests measure learning. Subnormality is defined as low performance on a test of learning when

compared to the distribution of scores for others of similar sociocultural backgrounds. This model assumes that children from similar sociocultural backgrounds have had the same exposure and opportunity to learn a given set of materials and have had similar experience with test taking. It also assumes that these children have been similarly motivated by significant persons in their lives, and have no emotional disturbance or anxieties to interfere with test performance, or no sensory-motor disabilities. If these factors are constant, then the child who has learned the most probably has the most learning potential. To determine this, multiple regression equations based on the sociocultural characteristics of the child's background are used. An average performance is defined for children from differing ethnic socioeconomic backgrounds, and a child's performance is compared to the average score. Then, using the weighted scales, an Estimated Learning Potential is determined. Urban acculturation, socioeconomic status, family structure, and family size are the sociocultural scales used to measure background characteristics.

Dr. Mercer expects her material to be available for field testing within a year's time.

Mandatory nondiscriminatory testing as specified in P.L. 94-142 is a significant step forward. The emphasis on the child's assets, the use of several measures to sample more than one aspect of behavior and the placement decisions made by a team can be excellent safeguards for all concerned--child, teacher, and parent. However, no method is superior to the people who use it and this we must remember.

SECTION C

IMPLEMENTATION CONSIDERATIONS AND STRATEGIES

EDITORS' NOTE

Many individuals and organizations were helpful in providing input to the Congress during drafting of P.L. 94-142, and many continue to be involved with provision of technical assistance and support as state and local education agencies strive to implement provisions of the Act. Among these were the Council for Exceptional Children, the National Association of State Directors of Special Education (NASDSE), the Council of the Great City Schools, and others.

This section of the book presents background information and discussion of the continued efforts of two of these organizations. Schipper, Wilson, and Norman discuss the changing role of the state education agency in regard to education of the handicapped, and highlight the role of NASDSE in providing training and technical assistance to state education agencies. Kowalski describes the role of the Council of the Great City Schools in providing guidance, training, and technical assistance to some twenty-seven City School System Special Education Programs, describes major special education needs of these cities as determined by formal needs assessment conducted by the Council, and outlines the role of a BEH funded project, the SETAC project, in providing technical assistance and training for these cities in areas related to implementation of P.L. 94-142.

Also, in this section are two articles--one by Sage, which addresses local school responsibilities and actions required to review placement and programming systems as an important implementation strategy, and the other an article by Rinaldi which provides a review of and editorial comment on several major P.L. 94-142 provisions from the perspective of a practicing City Special Education Administrator.

SECTION C-1

THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

and

THE CHANGING ROLE OF STATE EDUCATION AGENCIES

WILLIAM V. SCHIPPER

WILLIAM C. WILSON

MICHAEL E. NORMAN

During recent years a variety of events, forces, and factors have impinged or impacted upon state education agencies. Some of the most significant and rapid changes are occurring in special education, where pressures are mounting to modify and expand educational programs and services provided handicapped children.

Recent court rulings and mandatory state and federal legislation have established the right of handicapped children to receive a free, public-supported education and to be provided programs and services which are appropriate to their needs. Such forces combined with court decisions dealing with civil rights, such as Brown, Swann and Goss; equity of financial bases, such as Serrano and Rodriguez; increased federal interest in education, and seemingly insurmountable problems faced by local school systems are representative of the numerous forces that have impacted on state education agencies. The result of such impact is the emergence of new roles and responsibilities to be assumed by the state education agency.

The purpose of this article is to discuss the changing role of the state education agency (SEA), particularly in the area of special education, and what one organization, The National Association of State Directors of Special Education (NASDSE), is doing to assist SEAs to fulfill their responsibilities. The article discusses the historic development of the state education agency, the changing role of the agency, and the role of NASDSE in developing competencies and leadership skills of SEA personnel.

HISTORICAL DEVELOPMENT OF THE SEA

That the role of state education agencies is changing is well illustrated in a statement made by James B. Conant at the 1964 Annual Conference of the Council of Chief State School Officers. He indicated that as late as 1959 he would have advocated that local school boards of education were the keystone to educational policy and that state departments of education were just to be "tolerated". "Now," he said, "I have changed my mind." In his book, Shaping Educational Policy, he wrote:

> What is needed are strong state boards of education, a first class chief state school officer, a well organized state staff, and good support from the legislature.

It is interesting to note that there were only 177 professional educators in SEAs throughout the Nation in 1900, and practically none in special education at the SEA level. This number has now grown to between 12 and 15 thousand, of which about 500 are special education personnel.

During the early stages in the development of educational systems in this country, there was no apparent need for a state agency for education, and consequently none existed. As the educational system grew both in size and number, the need for some type of office that

would gather, compile, and disseminate educational data became evident. As a result, during the early part of the nineteenth century, various states appointed chief state school officers who became, generally speaking, the state agencies for education.

This period in the development or evolution of the SEA has been characterized by Beach and Gibbs as the "Statistical Stage," and it was during this stage that the concept of state governing boards, other than state legislatures, developed. From the "Statistical Stage" the SEA moved into what has been characterized as the "Inspectoral Stage," in which enforcement (regulatory) activities replaced data-gathering as the principal focus of agency efforts. Then, gradually in response to changing social forces, the concept of educational leadership as a role of the SEA emerged in various states. Thus, the most recent stage of development--the "Leadership Stage" became a generally accepted function of SEAs only in the last decade.

The Changing Role and Functions of the State Education Agency

As has been noted, the historical functions of the SEA were those of data gathering, regulatory and leadership. It is generally accepted that elements of all three evolutionary stages remain as functions of state education agencies at the present time. Emphasis, however, has shifted from data gathering and regulatory activities to leadership functions.

In a recent study of the role of state education agencies, Campbell, Srouge and Layton subdivided the leadership function into five categories: 1) operational, 2) regulatory, 3) service, 4) developmental, and 5) public support and cooperation.

The operational function, according to the study, occurs when the SEA is directly involved in the administration of schools and services such as special schools for the Deaf and Blind or special programs such as Vocational Rehabilitation or direct state operation of certain public schools. The regulatory function occurs when state and federal statutes require the SEA to regulate (or enforce) specific aspects or elements of the educational program, including curriculum, buildings, transportation, etc. The third function, service, occurs when the SEA actually provides some type of service (or assistance) to local education agencies (LEAs). The SEA provides, on occasion, expert assistance in the form of consultants and specialists and a myriad number of other inservice activities. The fourth function--developmental activities--is concerned with meeting the needs of the SEA itself. This function is to be found in the efforts of the SEA to acquire and maintain an adequate staff, to provide for staff development and to utilize its total resources with maximum effectiveness. The final function, public support and cooperation, consists of those activities that are designed to secure the support of the general public including the financial support necessary to provide programs for all handicapped children.

It is generally agreed that the first two functions described above, i.e., operations and regulations--are basic to the overall purposes of an SEA. This thought is made all the more compelling when it is recognized that these functions have in most states and territories been mandated either by state or federal statute, most significantly, the Education for All Handicapped Children Act of 1975 (P.L. 94-142), which will force SEAs into a heavy monitoring and compliance relationship with the local education agencies.

By way of illustration, special education units must begin to oversee the implementation in local education agencies of these concepts incorporated within P.L. 94-142:

1. that each handicapped child has an individualized education program, including a statement of goals, specific objectives, and time schedules, with at least an annual review and reconsideration;
2. that handiapped children are education in the least restrictive setting possible;
3. that the process by which the child's program is decided involves the child's parents and the child (where appropriate), as well as the teacher and a representative of the responsible agency of the public school system;
4. that procedural safeguards are implemented regarding decision making about the handicapped child, and that due process in hearings and in the examination of relevant records is guaranteed;
5. that comprehensive inservice training programs are implemented
6. that the schools insure that no child is excluded from an appropriate education at public expense;
7. that emphasis is given to identifying and evaluating handicapped children for appropritae educational services to be prescribed, while avoiding labeling children or stigmatizing or discriminating against them.

Leadership

Within the framework of the function of leadership, however, the role is not, and never nas been, all that clear, especially within special

education divisions of SEAs. However, new directions and impetus for this role have been set by P.L. 94-142. For example, state education agencies are now asked to:

1. provide diversity in leadership
2. organize and coordinate an effective educational system
3. conduct comprehensive state planning
4. establish sound foundation programs of financial support
5. provide efficient coordination and distribution of funds
6. establish minimum standards for achievement and quality controls
7. assist localities in developing more adequate education programs and evaluating results
8. develop good information systems on the facts and conditions of education

Need for Assistance

Changing demands with respect to various facets of the educational system have resulted in similar demands for changes within special education divisions in terms of both goals and functions. Yet, of all agencies concerned with or engaged in education, the SEA has perhaps the least viable mechanism or vehicle to allow its professional personnel to become equipped to cope with the changes and demonstrate the leadership that is being demanded.

Several facts about SEAs and special education personnel who comprise them appear to be appropriate:

1. the number of personnel in SEA special education units is rapidly increasing

2. the turnover rate in the position of state director of special education is high. Twenty directors (40 percent) have been in their positions less than 18 months
3. preservice training programs specifically designed to prepare professional people to serve in SEA roles do not exist in most states
4. most professional special education personnel entering SEAs have been prepared to function at the local school district level
5. special education divisions within state education agencies, by and large, have not been able to compete successfully for experienced personnel with large local systems, colleges and universities, and federal agencies

Role of NASDSE

For the reasons cited so far in this article, there is a need for continuing professional staff development programs for SEA special education personnel. Parenthetically, the question as to who or what agency should initiate and maintain staff development programs is rather moot: Few such programs exist. NASDSE's staff development projects of the past four years is the only known such effort in the United States geared specifically to develop competencies and leadership capabilities of SEA special education personnel.

In 1972, an assessment and analysis of state level special education agencies by a study committee of NASDSE, Inc. concluded that the existing organization and function of instructional programs and the delivery of supportive services to the handicapped lacked the continuity necessary to make them fully effective. Therefore, through a special

training grant from BEH, NASDSE developed and has implemented a competency-based training program for state education agency personnel.

Assess Needs

NASDSE's National Office staff is in constant communication with the states to assess needs for training, products, conferences, skills, program ideas, information, etc. and to assess relevance and interest in planned and prospective activities and products. NASDSE then draws upon its consultant and resources bank to create activities and/or products to improve competencies and skills to meet the need.

Meeting Needs

A basic assumption underlying the NASDSE training model and the NASDSE role as a "broker" in providing training to meet the expressed needs of state department personnel, is that, within the field of special education administration, there exists a basic, untapped pool of rich resources. State directors and their staffs, by virtue of their experience and education, represent considerable experience and expertise which NASDSE has been using in creating products and delivering training. Following this assumption, it is believed that most of the expertise which SEAs need to adequately perform their roles already exists, collectively, within all SEAs--however, not all of it exists in any one person or in any one SEA. Therefore, it is a philosophy of the National Office to draw upon existing known expertise and quality programs whenever possible to help meet the needs of states through training activities and products. In this manner, SEAs have begun to rely more on each other's abilities, experiences and exemplary programs, while promoting interchange and communications among personnel in all SEAs. This practice

of using SEA personnel as consultants and trainers has had resounding support of our constituency during the past three years.

NASDSE also has cultivated a talent bank of resources to co-sponsor training activities, to draw upon in creating training products and in the dissemination of products and activities. These include university and local school district personnel as well as government and private agencies.

As the compliance and monitoring roles of SEAs become more and more visible as a result of P.L. 94-142, the leadership functions, often historically neglicted, become increasingly important. It is the function which NASDSE attempts to address in its national staff development project, and which is vital to meeting the mandates of P.L. 94-142 and for forging new national/state/local partnerships essential to achieving the goal of an appropriate education for all handicapped children by 1978.

SECTION C-2

PERSPECTIVE ON NEEDS IN TWENTY-SEVEN GREAT CITIES

ANTHONY P. KOWALSKI

The educational needs of handicapped children have long been a matter of concern in the cities. The earliest and most established programs are found there. Yet in recent years much more extensive activity in special education has become necessary. Spurred on by Federal legislation and judicial mandates, urban school districts have sought to respond with a more perceptive understanding of the needs of the exceptional child and a more effective delivery of services to them.

The efforts of the special education directors in the largest urban school systems have been coordinated in recent years by the Council of the Great City Schools. In periodic workshops and sponsored projects, these directors have sought to improve their special education programs in the cities. The following is an attempt to document some of these recent activities and to review the special education-related needs of member districts in that period.

ACTIVITIES OF SPECIAL EDUCATION DIRECTORS

The Council of the Great City Schools in an educational organization representing the largest urban school systems in the country. Over a twenty-year period it has grown from ten major cities chiefly in the Northeast, to twenty-seven cities scattered in all regions of the country.

Its goal is the improvement of education in the large cities. Its board of directors, which meets semi-annually, consists of the Superintendent of Schools and a board member from each city.

Within the Council, there are a series of ad hoc committees or task forces focusing on specific issues. These ad hoc committees have been established in the area of school finance, equal educational opportunity, vocational education, research and many others. They usually involve the person from each of the cities with primary responsibility in that specific topical or program area. The Task Force on Special Education is in that category, and is described below.

The Task Force on Special Education

In 1971, personnel from the Exceptional Children Branch, USOE, and a panel of consultants in the field of special education presenting at a Leadership Training Institute foresaw the emerging problems in the education of the handicapped in the inner cities. They proposed a series of meetings with the administrators of special education programs from the largest city school districts in the country to begin working together toward resolution and elimination of the problems. This group turned to the Council of the Great City Schools to serve as a vehicle for bringing together the desired personnel.

The first meeting of Great City Special Education Administrators took place in San Francisco in May, 1971. The objective of the meeting was to discuss the problems facing school administrators in meeting the needs of handicapped children in the inner cities and to work towards the coordination of the education of the handicapped with regular education. Martin Dean, Assistant Superintendent in San Francisco and an advisor to the Special Education Leadership Training Institute, at the

University of Minnesota was largely instrumental in organizing these early meetings.

This Committee on the Education of Exceptional Children, as it was then called, met twice a year in the early seventies, in conjunction with the semi-annual meetings of the Board of Directors of the Council of the Great City Schools, and was instrumental in establishing policies in the field of special education for the Council and its member cities. The Leadership Training Institute, directed by Maynard Reynolds of the University of Minnesota, has provided seed money on several occasions to enable this group to convene and make progress in solving problems.

In 1972, a survey of Council member districts relative to special education priorities indicated retraining of teachers to be a high priority item. This included the retraining not only of special education staff, but also of regular classroom teachers. As a result of this needs assessment, a conference was held in February, 1973, in Miami, Florida, devoted to the anaiysis and discussion of training needs in the Great Cities. Representatives of institutions of higher education and state departments of education attended this meeting at the University of Miami. A subsequent meeting of the committee was held in May, 1973, focusing on recent litigation related to special education.

In December, 1974, another training conference was held in Boston, Massachusetts dealing with the effects of school system decentralization on special education programs. It was preceded by a survey questionnaire on decentralization. The presentations included a close examination of decentralization in two large cities - Philadelphia and Chicago.

In 1973 the Committee had organized itself more formally and elected a small executive group. Ernest Willenberg, Assistant Superin-

tendent of Schools in Los Angeles assumed the chairmanship. He served in that capacity until September, 1975, when Richard Johnson of the Minneapolis School System was elected as chairperson. At the same time, Marechal Neil-Young of Philadelphia was elected vice-chairperson, and Keith Gainey of Cleveland and Oscar Boozer of Atlanta were elected members-at-large.

Another conference of the now Special Education Task Force was held in Atlanta in September, 1975. Sponsored by the University of Minnesota Leadership Training Institute through funds from the U.S. Office of Education, the conference dealt with the development of collaborative models in urban environments. The purpose of this conference was to develop more collaborative planning between urban school districts and neighboring institutions of higher education.

SETAC Project

In recent years, there have been several attempts to secure funding for special education program development in the Great Cities. These efforts included a proposal for a national training support system in June, 1973, and a proposal for a model technical assistance and development project for providing educational services to handicapped children in urban school districts in October, 1974.

At the Atlanta Conference in 1975, a decision was reached by Task Force members to seek funding of a Special Education Technical Assistance Consortium (SETAC) for the Great Cities to assist in the attainment of full service for the handicapped in all the Great Cities. As subsequently conceptualized by Richard Johnson of Minneapolis, Louise Daugherty of Chicago and Marty Dean of San Francisco, SETAC would seek to impact on the total school system of a large city. It would

involve successive penetrations of a school system, focusing in particular on key issues.

In the first year of operation, SETAC would provide regional institutes for key personnel in each school system (SE director, school attorney, school board member, teacher union representation, parent group representation, the superintendent's office, local IHE representation, state department SE director, principal's association representation and others), and pilot two local institutes to serve as a model for the second year. In the second and third years, SETAC would provide local institutes to impact more fully on all principals, teachers and community leaders.

With the signing of P.L. 94-142 in November, 1975, and the growing concern about implementation of the law in large urban environments, a revised proposal was approved by the Division of Personnel Preparation of the Bureau for Handicapped Children (BEH). This proposal requested funds to train administrators in the twenty-seven cities in preparation for implementation of P.L. 94-142.

Under this funded proposal, the SETAC staff developed plans for one initial national training institute (NTI) involving the special education directors from member cities. The NTI was to be followed by four regional workshops involving at least three key personnel from each city. In addition, a technical assistance component was designed to assist in meeting high priority needs of selected cities.

National Training Institute

The first major activity of the SETAC Project was the National Training Institute held in Chicago at the Bismarck Hotel on October 20-22. This Institute was an in-depth training session for the top special

education administrators in each of the twenty-seven Great City school systems. Richard Johnson, formerly Director of Special Education in the Minneapolis Public Schools and currently professor at St. Cloud State University, St. Cloud, Minnesota, served as Director of the Institute.

The first day began with an overview of the law by Congressional staffperson Lisa Walker and an overview of the proposed regulations by BEH representative Tom Irvin. This was followed by fifteen minute presentations on key elements in the bill by specialists in each of those areas. These included funding and entitlement, least restrictive alternative, procedural safeguards, full service requirement, child find, individual education program, non-discriminatory testing and special state responsibilities. The evening was devoted to reaction, discussions and formulation of issues and questions relative to these major areas.

The second day was devoted to in-depth interest sessions conducted separately on each of the topical areas, as well as two management strategies sessions. By the end of the day, each director was asked to fill out a needs assessment questionnaire to provide information for planning future workshops and technical assistance strategies to meet the specific needs of the large cities.

The third day provided individual consultation by district, a preliminary report on the implementation status in the cities and a general discussion of major areas of need.

Subsequent to the National Training Institute, SETAC staff analyzed the needs of each city as reported in the needs assessment survey and individual interviews. On the basis of such knowledge, the staff began planning a series of regional workshops for February-April. The objective of these regional workshops was to address specific, documented

needs in the cities of that region, and to plan further technical assistance mechanisms.

NEEDS ASSESSMENT ACTIVITIES

Several formal attempts have been made in recent years to identify specific needs of member districts. These needs assessments normally have been conducted prior to undertaking program activities among Council cities. A discussion of these several needs assessment surveys follows.

1972 Training Survey

In early 1972, a brief survey of member districts was conducted to ascertain special education priorities, the relative importance of various training activities and the adequacy of such activities. The result indicated that 87.5 percent of the respondents considered the retraining of special education staff a high priority. Only 13 percent of the respondents felt their present effort in that regard was adequate, while 43.75 percent considered it barely adequate and 43.75 percent totally inadequate.

The retraining of regular classroom teachers in the identification of handicapped students was considered of high importance by 67.5 percent of the respondents. About 62.5 percent perceived their current efforts to be inadequate, while 37.5 percent felt they were barely adequate.

The training of regular classroom teachers to teach handicapped children in a regular classroom setting was noted to be of high importance by 81.5 percent. 87.5 percent felt that their present efforts were inadequate.

1973 Questionnaire

In the aftermath of the 1972 survey, a Miami Conference was organized in February, 1973. The discussions at that conference generated another questionnaire to determine the specific high priority areas in need of external support for the cities. The analysis of these repsonses resulted in a categorizing of six major topics of concern: 1) change strategies, 2) management systems, 3) information systems, 4) child study, 5) interagency cooperation and 6) other critical problems. Each of the broad categories were further broken down into subproblem areas, and were transposed on a technical assistance matrix for a proposal national training support system.

1974 Assessment

A reassessment of training needs in 1974 by the Council's Staff Committee on Exceptional Children resulted in the following priorities: 1) training regular classroom teachers, through which teachers could acquire competencies for the education of exceptional children in the regular classroom setting; 2) training school administrators and other education personnel, through which each would understand the educational needs of exceptional children; 3) designing training programs to respond to litigation, mandates and state laws requiring equal educational opportunities for handicapped children; 4) cooperative training of regular education personnel by school systems and institutions of higher education; 5) collaborative assessment of training, administrative and organizational needs of school systems in programming for children in regular classrooms.

1975 Survey

In order to assess more clearly and more accurately the precise state of special education in the Great Cities, an extensive survey was conducted by the staff of the Council of the Great City Schools in September, 1975. First, the Council was interested in determining the financial allocations to Special Education Departments in the Great Cities and specifically the subsidies which arise from federal, state and local sources. The survey revealed uneven fiscal policies from state to state, resulting in severe constraints on certain Great Cities.

Second, the Council was interested in determining the specific number of handicapped children served in each city, categorizing them in terms of program and age level. Different methods of categorizing handicaps made this somewhat difficult, but a general pattern did emerge. If, as a recent Rand Study contends, about 10.7 percent of youths aged 0 to 21 in the United States are handicapped, the Great Cities are well on their way to serving most of the handicapped. However, an uneven pattern in the cities also emerged here.

Third, priority needs were determined by the survey. These priorities in turn reflected the budgetary constraints and training needs of the member cities. The training of regular teachers, special education teachers, administrators and parents regarding the specifics of full service to the handicapped was the most urgent need.

1976 Survey

A further needs assessment process was conducted at the National Training Institute in Chicago on October 20-22, 1976. The results of this survey were similar to the needs assessment survey of 1975, as well

as to the 1974 Assessment. In-service training of staff has been a major priority throughout.

Table 1 summarizes the overall results from the needs assessment, and includes responses from 26 of the 27 Great Cities. The results were not only consistent with previous surveys, but also agreed with structured interview data secured at the same National Training Institute.

The areas of most need, in descending order of priority were:

1. Comprehensive System of Personnel Development
2. Individualized Education Program
3. Participation/Management of Private School Children
4. Least Restrictive Alternative

In addition to the areas listed above, the development of management information systems was stated as a technical assistance priority. The only area that was uniformly judged to be "not a problem" was Protection in Evaluation Procedures. The remaining three areas (Free and Appropriate Public Education, Procedural Safeguards, and Confidentiality), while not presenting problems for the Great Cities as a group, were judged as areas that require further action by a few districts.

In conjunction with the National Training Institute, SETAC and Institute staff members conducted individual interviews with the special education directors to determine still further the resources and needs of each of the cities. Each director was asked to define the extent of implementation of the law (P.L. 94-142) relative to the nine categories presented. The result (Figure 1) showed once again the high priority for a Comprehensive System of Personnel Development and for Individualized Education Programs.

TABLE 1
1976 Needs Assessment Data

Based upon 26 Cities' Responses to
the "Needs Assessment of Local Priorities"

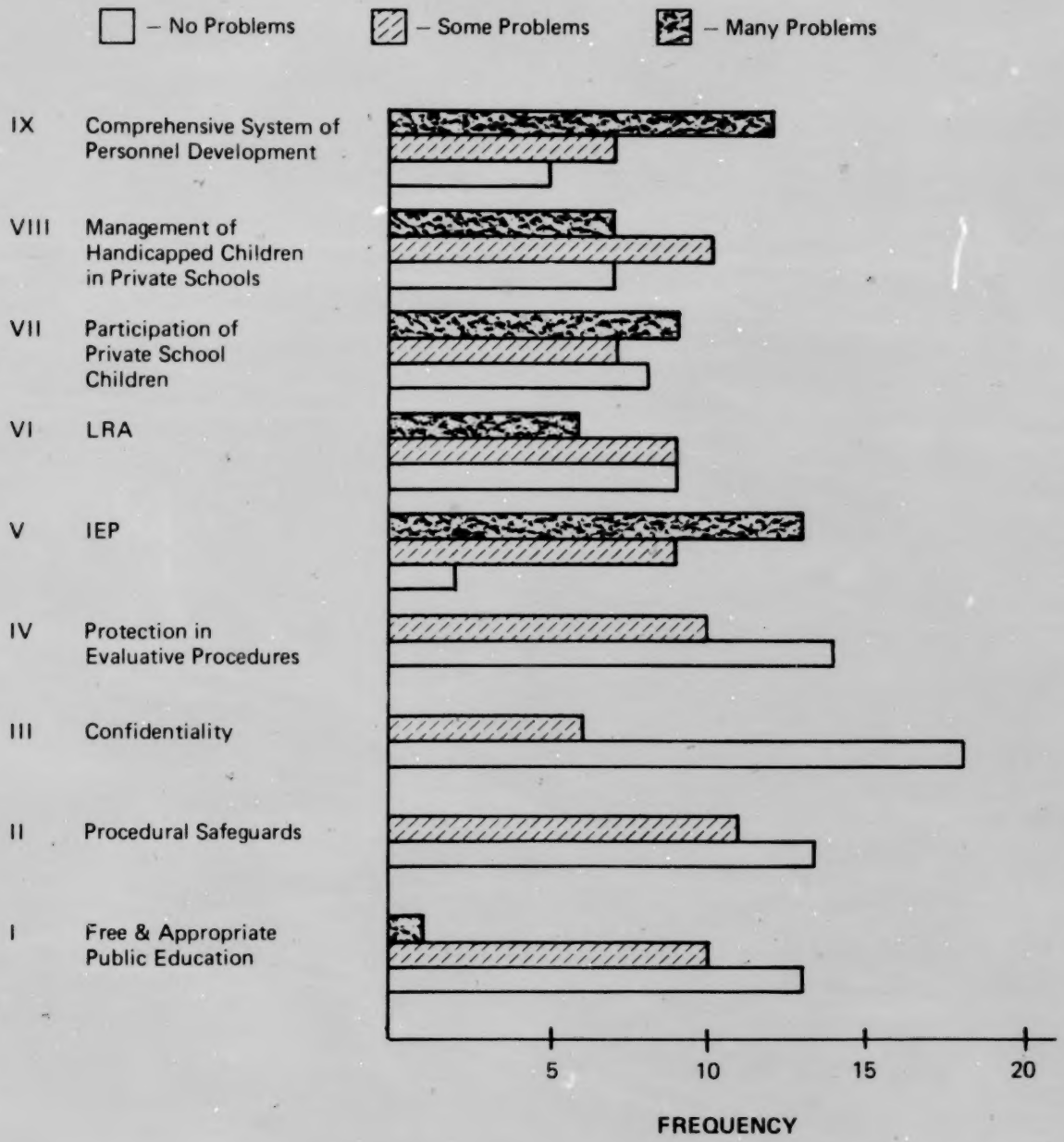
	Response Percentages Based on Totals per Area				Median Judgment of Extent of Implementation (1-3, 4, 5-7) low high	No. of Districts Indicating priority for TA*
	Y	N	S	IP		
Free & appropriate public education	76	15	--	9	5 (1, 3, 20)	3
Procedural safeguards	76	10	8	6	5 (1, 2, 19)	3
Confidentiality	79	9	3	9	6 (0, 2, 23)	3
Protection in evaluation procedures	86	2	7	5	6 (1, 1, 23)	0
IEP	47	15	--	38	4 (10, 6, 10)	10
LRA	84	7	--	10	6 (3, 3, 20)	5
Participation of Private School Child.	51	35	--	14	5 (8, 2, 14)	0
Management of hand. child. placed for serv. in private schools	67	26	4	3	5	0
Personnel development	6	23		71 (being planned)	3 (13, 5, 7)	17

*Other areas indicated: management information systems - 10; LEA/SEA collaboration - 2.

Y = yes N = no S = some IP = in process

TABLE 2

Extent of Implementation Problems among Great City Schools



(Courtesy of Edcon Associates, Philadelphia)

SUMMARY

The Council of the Great City Schools services about five million students, including half a million handicapped. Different definitions and different methods of counting, however, make it difficult to establish an accurate figure. The 1975 Survey, nevertheless, counted 425,000 handicapped students being served. New data-keeping processes recently begun and the additional child find procedures adopted will result in more accurate and potentially higher figures for the future.

The bulk of surveys conducted by the Council in the past five years have emphasized training needs. Personnel preparation invariably was the top priority. This extended to both special and general directors and to every level - administrative, professional and non-professional personnel. These priorities were again verified in the most recently conducted needs assessments.

The perception of needs is the first step in a program of service. The identification of resources, the planning of strategic interventions, the implementation of adequate plans and conduct of ongoing evaluation to perfect the process are necessary steps for achieving the goal of full and effective service to the handicapped and to meeting other requirements of P.L. 94-142. This process is well begun in many urban areas, but continued training and technical assistance will be necessary if full implementation is to be gained in a reasonable amount of time.

SECTION C-3

ORGANIZATION OF REFERRAL AND PLACEMENT SYSTEMS

DANIEL SAGE

Notwithstanding whatever Shakespeare said about "a rose by any other name" I would like to suggest that the fact that a contribution entitled "Placement Systems" is in this book is, I believe, in an important sense, a part of our problem. The language we use to describe anything we do, not only reflects what is but also influences and perpetuates what may be. As I thought about this, I realized that you and I probably have something in our heads when we speak about "placement". Yet the word implies picking somebody up and moving them. The act of putting somebody some place, of course, is an accurate description of the process if we are talking about traditional programming vehicles for Special Education. But I would like to suggest that we would be a lot better off in the long run if we could quit using the word "placement" for this process and substitute perhaps some word or perhaps a pair of words like "program planning" or "programming". Or there may be a dozen other terms that would do the job as well as the ones I suggest.

The traditional use of the term "placement" perpetuates the traditional use of placement as a concept which is contrary not only to the specifics of P.L. 94-142, but certainly contrary to the National Advisory Committee for the Handicap's priorities, as presented in the last annual report which focused on the emphasis of least restrictive alternatives

and full service goals, etc. This term perpetuates the idea that one doesn't do anything with a student unless one moves him from where he was to some place else.

Given the tradition of the term "placement", and our past "moving bodies" notion of what that term means, it's my feeling that, before we can intelligently discuss specific procedures related to these referral and placement systems, it's important to ensure that we understand there are certain policy issues that have to be understood and in place before procedural aspects can even be considered.

One way of looking at these policy issues is the excellent way that I feel Dick Johnson has done in his article "The Renewal of School Placement Systems' in the CEC publication Public Policy and Education for the Handicapped. And because I rarely do anything very original I want to review some of Dick Johnson's points about the policy issues that have to be in place before development of procedural aspects (see Figure 1).

FIGURE 1

PLACEMENT-RELATED POLICY ISSUES REQUIRING ADOPTION

Free and Appropriate Education for all

Continuum model

Without labels

Parent (student) involvement

Informed consent (due process)

Least restrictive alternative

Criterion-referenced assessment

First of all, unless the system has formally adopted the concept of free, appropriate public education for all, procedures related to determining and executing individual special education programs will always be developed which will exclude some children in the course of including some, and such exclusion will almost always be de facto, and without use of due process. Procedurally, "all" has to be defined, because this term is going to vary from one place to another, depending, for example, on whether one is including pre-school programs or not.

Second, the formal adoption by a school system of a "continuum model" must also be a policy before procedures are developed. There have to be alternatives available before there can be least restrictive alternatives. Traditionally, most of our systems have less than the full range of alternatives.

Third, the school system needs to adopt the concept "without labels". In many places, labels are legally required in order to be able to identify and justify the channeling of resources. Where this is the case, the degree to which policies are embraced which minimize labels is an important consideration on what can be done procedurally thereafter. For example, one can walk into a classroom and listen to what the teacher says when she is talking to you or any other visitor about the kids. The type of label-oriented references the teacher makes in describing students is often reflective of the type of procedures used to identify, plan, and place handicapped students, and a pro-active policy de-emphasizing labels can have an impact on teacher use of labels.

Fourth, a policy of parent (and/or student when appropriate) involvement must be adopted. There are four topical involvement levels of consumer (parent or student) involvement. These are: (1) at the level

of identification, (2) the level of assessment, (3) the level of placement or decision making, and (4) the level of program planning. I would submit that, traditionally, we have not had the habit of that much parent involvement. Unless schools make a very strong concerted effort to formally adopt parent involvement policies, it's probably going to be given only minimal attention.

Fifth, the informed consent idea, as a part of the due process, with use of real informed consent rather than just token informed consent, is a critical policy matter. It's easy to support token informed consent, and to say that we have really informed parents and/or students what the alternatives are. But frequently, as we provide the information, it's with the fore-knowledge of the parents that there is a gun to their head and that they don't really know all aspects of all the alternatives. After all, our whole society is built on the idea of always giving slanted information. Certainly commercial advertising would be dead today if it did not use slanted information. Everything we do is based on slanted information, including the information that we, as carriers of our cultural norms, provide as we talk with our customers about what the alternatives are. I would dare say that most of the time the consent that our customers give is probably based on information that is not always totally true.

P.L. 94-142 holds up the very idealistic idea of making sure that everyone is totally informed, and I suppose it will be rarely that we will really live up to that ideal. But unless the adoption of a policy of totally informed consent takes place, all the procedures we put in place aren't going to do much.

Sixth, the least restrictive alternative, as a formally adopted policy by the system, is needed because typically, traditionally, there are barriers to utilizing the least restrictive alternatives. Administrative expediency is, I presume, the most obvious barrier and sometimes even economic differentials make a difference. Sometimes it is really economically advantageous, under the funding structures of many states, to use a more restrictive alternative, due to the way funds are distributed.

Seventh, and the last policy referenced in Figure 1, "criterion-referenced assessment," is merely a reminder that schools need a policy of using typical norm referenced data only where they are clearly relevant to the development of an individualized educational program. Again, this is a very hard habit to break away from and, therefore, it probably won't happen unless the system formally adopts a policy to that effect.

Let's assume that a district adopts these policy issues. What, then, are the procedural needs that flow from those policy issues (see Figure 2)?

FIGURE 2

PROCEDURAL NEEDS FOLLOWING POLICY ADOPTION

Guidelines for consumer involvement in decision processes

Guidelines for procedural safeguards

School based student support team guidelines

In-service training system for support teams

Instrumentation for systematic observation

Individual program planning process

Periodic evaluation guidelines

Central monitoring of more restrictive placement decisions

Policies need to be further defined and supported by the development of written procedures. Procedures represent the what, who, when, and how of policy, and must be developed in key topical areas, such as those included in Figure 2.

One of these areas is consumer involvement. The process of how to secure consumer involvement and what to do about it when one is unable to get it (many times one can't). We need the documentation of what has been done in the process of attempting to get consumer involvement in order to remind ourselves as we go along that there is a policy of consumer involvement and that there are some procedural mechanisms to assure it, as far as it can be assured. These procedures, as do the others listed in Figure 2, need to be in writing because the greater the change from traditional practice that is expected, or is being attempted, the greater the need for detailed specification.

Guidelines for procedural safeguards are also needed. For example, the exact procedure for obtaining "informed consent" should be explicated. Also, the policy that each building needs its own student support team, or whatever language you choose to call it in your locale (student support team is Minneapolis' terminology), needs to be defined in operational detail. The specific notions that the parent and the regular class teacher will be involved, that teams will be decentralized to the local school building level, and that there will be responsibility delegated to the local school building for making classes of placement decisions needs to be developed in some detail to help ensure smooth implementation. Also, these guidelines must be disseminated to the principals, and in-service staff development take place, as these support teams will, especially where this approach is a new one, be adjusting to an unfamiliar function.

The need for instrumentation for systematic observation is suggested here as an alternative or complement to traditional psychometrics. That is, the whole appraoch of doing things at a school-based level and providing for the needs of a variety of handicapped children without necessarily having to resort to movement of the person from one placement to another, depends upon instrumentation other than those available in the formal practice of psychometrics. In this repsect, the use of adaptive behavior scales should be considered to assist in systematizing observations.

In another area, procedures should be developed to assure that student assessment data and team action always lead to a written individualized educational program (IEP). As a part of that written IEP, or as a part of the procedure, the use of measurable performance objectives should be required and reassessment of the attainment of those objectives made at regularly scheduled evaluation points.

In another topical area, some procedure for central monitoring of all the more restrictive placement decisions is needed. Even though we are basing our structure on the idea that more and more programming decisions will involve emphasis on less restrictive placements, and that more decisions can and should be made at the local school level by school-based student support teams, there still needs to be some mechanism in place for ensuring that, when the more restrictive placement decisions do occur, we can be certain that those decisions are entirely in the child's interest. Even given "good faith" on the part of all concerned, there is need for a "checks and balances" mechanism.

Now, let's assume that, in addition to policies, all necessary procedures have been or are under development. What use are either without appropriate programs?

First, then a district must have policies in place, understood, and adopted. Then sets of procedures or written guidelines should be in place. Next, appropriate programs must be developed. Several important programming actions are referenced in Figure 3.

FIGURE 3

PROGRAMMING ACTIONS

Operational least restrictive alternative delivery system, based on noncategorical continuum model

Develop alternatives to special class/schools such as:

- Training and consultation for generalists
- Resource and tutorial services
- Itinerant services
- Part time special classes

Arrange for available space in more restrictive services for those unserved or underserved with more severe needs

These actions will require major time commitment. Although it takes time to get policies adopted, and it takes time to establish procedures, it is going to take <u>even more</u> time to actually get some program actions in place. And I have a suspicion that the more established the existing system is, the greater the constraint would be on change. Superficial change, for example, at the top in a central office directorship, or something like that, while it may obviously be necessary, is certainly not the same as change deep down in the system where "the rubber meets the road" or where we have the eyeball to eyeball relationship between the teacher and the child. The programming action that is the greatest, most crucial, and hardest to accomplish here would be the actual

operationalization of a least restrictive alternative delivery system, based on a noncategorical continuum model of some sort.

These words imply the existence of many alternatives, alternatives to special classes or special schools, not as a complete replacement, therefore, but additional alternatives such as, for example, training and consultation for generalists. This type of service should be delivered through training and availability of consulting services for generalists. As another alternative, resource and tutorial services should be available at all levels - pre-school, elementary, secondary, and vocational. Also, itinerant services and part time special classes should be available to complete the basic range of alternatives.

In another, equally important, programming action area, the need for available space in the more restrictive services for students with more severe needs must be attended to. In other words, we are not doing what needs to be done if there are still waiting lists for programs for severely handicapped or for anyone else requiring a more restrictive alternative.

The massive challenge that current times and P.L. 94-142 dictates spreading implementation responsibilities to the broadest possible domain. In other words, administrators at central office levels are going to be unable to implement P.L. 94-142, or even renewed placement systems, without a broadly spread responsibility and accountability system involving local school-based personnel. In any size system getting something to the school level becomes crucial. The larger the system, I would submit, the greater the need to spread responsibility and accountability to the school-based level.

There are never going to be enough central office special education personnel. Special Education Departments are simply not going to have enough supervising staff or other specialized personnel to implement P.L. 94-142 from a central level. I would suggest that the whole implementation process has to be focused initially on a school-based support service system within a local building, with the idea that one doesn't do anything centrally that can be done at a building level. This requires a school-based support system. See Figure 4 for elements of this support system.

FIGURE 4

SCHOOL-BASED SUPPORT SERVICE REQUIREMENTS

Local Building focus

Available multi-disciplinary personnel

- Principal (designee)
- Regular (referring) teacher
- Special (resource) teacher
- Parent (and/or student)
- Part time supports (soc. wkr./psych.)

Internal decision authority

Retention of responsibility

Minimum formal assessment

Minimum labeling (as law allows)

Utilization of multiple (internal) options

Outside referral (last resort)

In a school-based decision system, several persons from multiple disciplines should participate. Among these are: The principal or some other generalist administrator designee who would be involved in all cases; the regular or referring teacher who would be case-specific, with the actual person varying from case to case; the special education teacher, probably classified as a resource teacher (this concept, of course, assumes that there be some sort of specialist teacher available in or to every building) who would function as a general special education representative on all decisions made by the team, the parent and/or student who would be case-specific; and part support personnel that would presumably not be available on a full time basis within any school, but on some shared basis, e.g., social workers, psychologists. For the individual school these personnel would be considered part time support personnel.

As another requirement, this student support team, within the building-based support system, should have internal decision authority for use of special education programs within that building. This decision authority would operate under well defined guidelines that the Director of Special Education would need to propagate and monitor. Under this system decisions can be made about kids <u>within</u> that building for services <u>within</u> that building, and the school staff would be responsible and accountable for wise and effective use of these resources.

At the school level of decision making, one requirement is for a <u>minimum</u> of formal assessments. Many adjustments within the school don't require legal identification of the student as handicapped and don't necessarily require individual psychometrics, etc. Obviously, many state laws and/or regulations mitigate against this approach, but a total full

service program operating under an LRA concept must operate with procedures that do not require every student who ever receives any kind of service to be identified as, or labeled as "handicapped".

Another important requirement is minimum labeling, as minimum as the law allows. I realize that some districts are in states where the law makes it difficult to do because we have to "bounty hunt," and have to label the student to get the money in order to do anything at all. Where this is the case, the only solution would be to seek legislative change.

We need, then to be able to use a minimum of testing and labeling at the school level, and reserve as a last resort the referral of the child outside the school. Outside assignment should be made only after it has been determined that systems and program efforts within the local school building have been tried and proven insufficient for the individual student. Of course, there will still be plenty of those kinds of cases where there is a sizeable regular student population.

In this school-based decentralization of decision making model, a second level central office support system is needed to provide a check on out-referrals for more restrictive placement decisions. Several descriptors of this second level support system are included in Figure 5.

FIGURE 5

SECOND LEVEL SUPPORT SERVICE DESCRIPTORS

Area (moderate size district) focus

Standing coordinating committee

- Specialist personnel (permanent)
- Augmenting personnel (temporary, case specific)

Functions

- Receive referrals
- Evaluate data
- Convene meeting
- Plan program
- Recommend action
- Monitor execution

This second level support, checks and balances system would be the top level in small school systems. In very large systems, however, there needs to be a third level support system - the office of Special Education and a system of gaining access and input to the total administration. The function of this third level system would be to monitor the second level monitoring of other operations, to resolve conflict, and to locate additional case-related resources where necessary. Several specific characteristics of this third level support system are listed in Figure 6.

FIGURE 6

THIRD LEVEL SUPPORT SERVICE CHARACTERISITCS

Macro system focus

Office of central administration

Function

Administrative appeal

Convene hearings

Impartial judge

Binding decision

Last resort (before court)

Emphasis at the school system macro-level is on providing for administrative appeal, to convene hearings, to secure impartial judges in the case of such appeals, to render binding decisions, and to serve as a last resort before taking appeals through the court system. In other words, this third level support system should provide the last level of administrative appeal. Again, this will, of course, have some variance from state to state. New York will differ from most states because of the peculiar appeal structure that exists in the New York State System but I think in principle the idea holds.

In this article I have tried to briefly sketch, based on the article by Dick Johnson referenced earlier, some ideas of what I would see as necessary in order to get the mandates of P.L. 94-142 into place in most of our major systems, with particular focus on development of a renewed operational conception of student placement or programming - a concept based on a decentralized decision system which operates through a defined check and balance system and which is charged with the grass roots, daily responsibility for implementing established policy and procedure requirements under P.L. 94-142.

SECTION C-4

URBAN SCHOOLS AND P.L. 94-142

ONE ADMINISTRATOR'S PERSPECTIVE ON THE LAW

ROBERT T. RINALDI

This paper is presented in three sections. The first section is the introduction. The second section will include topical components of 94-142, and the third and final section will include a review of areas of concern and a summary.

INTRODUCTION

By way of introduction, this paper is intended to be proactive and not reactive, administrative and not political, and is designed to provide procedural and instructional information and opinions in regard to the legislation.

With the passage of Public Law 94-142 by the 94th Congressional Session, the most comprehensive, complex, sometimes inconsistent and difficult to interpret legislation for the handicapped has been presented. The Act provides funds, establishes planning add procedural requirements, and provides appropriate safeguards for the education of all handicapped children and their parents. It is important to note that this legislation is law, not the law according to the Bureau of Education for the Handicapped, not the law according to the United States Office of Education but the law of this land.

With provision for full services, equal education, and equal protection under the law, Public Law 94-142 is probably best described as civil rights legislation, recognizing the need for full participation of the handicapped population as a distinct minority group in the educational services available to all citizens of our society. The relationship of the handicapped population as a distinct minority group to other minority groups or other groups requiring legal protection is also established, although specific regulations regarding administrative procedures will probably remain imponderable for some time to come.

Regulations to monitor legislative provisions will be developed by two separate divisions of the U.S. Office of Education - The Bureau of Education for the Handicapped and the Office for Civil Rights. They shall include, but not be limited to, the topical components that are listed in the next section of this paper.

It is also important to note that 94-142 is not a new law. It is a series of amendments to Public Law 93-380, informally known as the Mathias Amendments, which itself was an amendment to Public Law 91-230. P.L. 91-230 established the Bureau of Education for the Handicapped, and got the Federal government in the business of providing funds and establishing regulations to the state and local education agencies in regard to programs and services for handicapped children.

REVIEW OF P.L. 94-142 BY TOPICAL COMPONENTS

In this section of the paper, I will review several sections of the law, and will in some cases make opinion statements or other comments as the major provisions are being reviewed. Topical areas discussed in the following pages are:

1. Funding and Entitlement
2. Least Restrictive Alternative
3. Full Service
4. Procedural Safeguards
5. Administration and Evaluation
6. The Individualized Education Program
7. Congressional Responsibility and Regulations

The first major section of 94-142 is Funding and Entitlement. This section includes the basis for provision of funds, based on the total number of handicapped children identified within the country. This is a quotation from the Statute:

> The Congress finds that:
> 1. There are more than eight million handicapped children in the United States today.
> 2. The special educational needs of such children are not being fully met.
> 3. More than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity.
> 4. One million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers.
> 5. There are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected.

6. Because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense.
7. Developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, state and local education agencies can and will provide effective special education-related services to meet the needs of handicapped children.
8. State and local education agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs.
9. It is in the national interest tha the Federal government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law."

Under 91-230, the original allocation of $2,450,000 nationally was provided for Federal support of programs and services for handicapped children. Under 93-380, that accelerated to $100 million as of the fiscal 1976 year. The funding and entitlement provision under 94-142 provides for a formula which pays, starting in 1978, five percent of the average per pupil expenditure within the country. That means you take the total amount of money spent on non-handicapped children, and you come to a fixed per pupil cost on a national basis. Five percent of that cost is authorized as the ceiling for expenditure for fiscal 1978. Fiscal 1979 moves to ten percent, fiscal 1980 - twenty percent, fiscal 1981 - thirty percent, fiscal 1982 - forty percent. One must remember, however, that that is the authorized level of expenditure--translation, that is the highest amount of money that can be spent. This does not imply that that level of expenditure will be actually approved and allocated by ensuing congressional sessions. This implies only that there is permission to spend that much money if the Congress so desires.

Translated into dollars, the authorized levels provide $200 million for fiscal 1977, growing to a total possible authorization of $315 million for fiscal 1978. Total maximum authorization at the Federal level by 1982, when 40 percent of the average per-pupil cost for educating handicapped children is authorized, is in the neighborhood of $3 billion. That means that if the full authorization is granted by 1982, the amount of money available at the Federal level will have grown from a total of $2,450,000 in 1967 to $3.16 billion in 1982.

Within the funding and entitlement section of the law, a 12 percent maximum is established. A maximum of 12 percent of the school-age population between the ages of 5 and 17 years of age can be served. That is not the population in the public school system, nor representative of the population in the private school system. That is a total 12 percent of the school-age population between the ages of 5 and 17 within a political subdivision can be served. One-sixth of that population - one-sixth of that 12 percent, not 2 percent of the 12 percent - one-sixth of the 12 percent can be identified and served as learning disabled.

A maximum of 50 percent of the monies provided through the law will be retained by the state during the first year of the Act, and 25 percent in succeeding years. The state will disburse these funds based on identified needs, according to identified criteria within other sections of the legislation. At least 50 percent of the money in the first year and 75 percent in succeeding years will pass through the states and go directly to the local education agency to provide services to specified children, also based on the criteria developed within the legislation.

By fiscal 1978, the state and the local education agency will provide full service or complete the planning to provide full service by 1980 for the entire population between the ages of 3 and 17. By 1980, full service must be provided for the entire population between the ages of 3 and 21, if it is consistent with state law.

If state law indicates compulsory education for handicapped children between the ages of 5 and 16, then that is what applies. If state law, such as in Michigan, indicates that the handicapped population is to be provided equal educational opportunity between the ages of 3 and 25, then the state law applies. If the state law says education for handicapped children must be provided between the ages of 5 and 17, and is permissive in terms of 0 to 5 and 18 to 21, then it is also permissive to provide for those populations.

What Congress has said is that full services must be provided between the ages of 3 and 17 by 1978 and 3 and 21 by 1980, if it is consistent with state law. Where state law establishes different age ranges than those age ranges established by the Federal law, then the provision is also permissive.

Within the funding and entitlement section, there exists a Hold Harmless Provision. That means that if the budget, through a combination of state and local funds, for a given political subdivision is $10 million for a given year and $2 million is provided through Federal funds, then the budget must be at least $12 million for the coming year. It doesn't necessarily indicate that all that money must be within the special education budget in terms of direct service. But it does indicate that new Federal dollars cannot supplant the level of expenditure already provided at the local and state levels. If your budget is $10 million

this year, and next year you get $1 million under P.L. 94-142, your budget must be at least $1 million more than it was.

Within the State Plan, there is a Hold Back Provision, which will be discussed later in this paper, which not only applies to the monies that are retained by the state, but which also applies under certain circumstances to funds which pass through directly to the local education agency.

Also, within the funding and entitlement section, there is a specific requirement that the state must develop a plan, regardless of the amount of money available or accrued, which incorporates all the regulations of the Statute and which indicates that full service for all handicapped children must be provided as a responsibility of the state and local education agency. This requirement includes the responsibility for the education of handicapped children in private schools, as well as public schools, and includes responsibility for the placement of handicapped children in approved non-public schools for the handicapped if an appropriate program is not available within the public school system.

The second major topical component of the legislation is what is being referred to by the lawyers as the Doctrine of the Least Restrictive Alternative, or the Doctrine of Least Restrictive Services. Now, this is a new term for most educators, but it is really not a new concept in regard to the legal profession. The concept actually goes back to the days of John Marshall and Oliver Wendell Holmes, and involves a legal precedent which loosely states that any state governmental unit or any bureaucracy is required to harm an individual citizen in the least restrictive manner possible - that whenever a state governmental unit, or whenever a bureaucracy must seek civil or criminal redress against the

individual, then that redress must be applied to the extent feasible in the least restrictive way possible. Again, this Doctrine is not a new concept. It is simply a new concept in regard to the provision of services for the handicapped.

The Section of the law requiring compliance with the Doctrine of the Least Restrictive Alternative is Section 612, quoted below:

> 'The state has established . . . procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.'

In section one within the Doctrine of the Least Restrictive Alternative, we note that this Doctrine not only begins to apply to placement, it also begins to apply to labeling. Also, it not only begins to apply to where a child is placed on diagnostic information, but it also begins to apply to how a child is evaluated, how he/she is described, and how he/she is programmed. Placement and programming should occur:

1. whenever possible with children who are not handicapped
2. under the premise that removal should occur only if the nature of the severity of the handicap requires that removal and if education cannot be achieved satisfactorily without use of a more restrictive setting

3. through use of non-discriminatory testing in regard to racial and cultural variables.

Regarding point Number 3 above, there are a disproportionate number of male children, of poor children, and of minority group children identified as handicapped throughout the country. There are an even greater number of male plus poor plus minority group children identified as handicapped throughout the country. In my opinion, we are forced to one conclusion, and it is a clean choice. The issue is very simple and very clear. In regard to programs and services for retarded children, since a disproportionate percentage of poor, male, and minority group children occupy the ranks of the retarded, either (a) those children are genetically inferior, or (b) the tests are racially and culturally discriminatory. It is a very clean issue. In some cities, it is a black and white issue. One must make a choice in regard to this issue. There is no hedging about it.

Tests and evaluations must also be administered in the child's native language or mode of communication. Moderate to severe cerebral palsied children are invariably identified as functionally retarded. If the tests or scales that are used to make the diagnosis have a verbal component or require for their standardization any kind of auditory-expressive language processing, then it seems clear that the test is invalid for that child because he has not been evaluated according to his primary mode of communication.

And lastly, and I personally think this is possibly the most significant statement within the legislation - It's almost included as an afterthought, but the interesting thing about statutory language is that once it's enacted, there's no such thing as an afterthought; it's there - "no single procedure shall be the sole criterion for determining

an appropriate educational program for a child." The need for compatible diagnostic procedures development across the educational and medical communities, particularly with reference to that statement, becomes critical. This point will be discussed in more detail in the third section of this paper.

Is it possible and/or desirable to develop procedural safeguards with respect to (a) the evaluation of a child in the native language or mode of communication, (b) the requirement that no single procedure shall serve as the sole criterion for determining an appropriate educational program? These are questions that the Bureau of Education for the Handicapped, the Council of the Great City Schools, the Council for Exceptional Children, the National Association for State Directors of Special Education, local administrators, and college and university personnel are wrestling with right now. Other important questions are: Is it appropriate to develop procedural safeguards with respect to administrative procedures concerning least restrictive services and non-discriminatory testing? In order to validate the Doctrine of Least Restrictive Service, must we go to court on every child? Must this Doctrine be established on a child-by-child basis or on a hearing-by-hearing basis? Is the parent always willing and always able and always capable of representing the rights of the handicapped child? What is the child advocacy role of the direct provider of service? Are the special education administrator, the special education teacher, and the local education agency advocates or adversaries of handicapped children. Is it possible to monitor the Doctrine of Least Restrictive Service by groups and classes of children? Is it possible to determine that ten percent of the special school population must be turned over each year and provided educational services in a less restrictive environment? There are many, many questions.

Third topical component is Full Service. I was privileged to announce to the parents of handicapped children in Baltimore City that at the start of school in September, 1976, we thought that we had an appropriate educational placement for each and every handicapped child who was a resident of the subdivision, regardless of the nature or severity of the handicap - that the only type of child we could not program for September, 1976, was that child whose school attendance would be a life threatening experience because of a chronic health or medical problem. Now, that is still true in Baltimore City. It will no longer be true in March, because by March, all of our program vacancies will be full. But next year, it will be ture throughout the school year.

Full service means that you find all the children, you advertise for the children, and establish a hot line for the children. You go out and seek the children. You provide an early identification system to identify the children. Then, you count the children. You submit that count to the state. The state submits that count to the Federal government. The Federal government uses that count to justify funding and entitlement under the legislation. That's the first provision of full service.

The second provision of full service is personnel development. The requirement on state education agencies and local education agencies is to provide continuing special development for their staff so that the full service requirement can be met. Interestingly enough, in this section of the legislation, there is no similar requirement for colleges and universities to participate in that process. At this point in time, there are no specific regulations that are pertinent to Part D of the Education for All Handicapped Children Act, which is the part that provides

professional development and training monies. As a practitioner, I must indicate that I am very much tired of college and universities training poeple for the world, when that world tend not to include my school system.

If a college or a university is domiciled within the borders of my political subdivision, then I would like to see a percentage of their dollars, perhaps fifty percent, to be specifically earmarked, not to provide pre-service education, but to provide in-service education for the personnel who are employed and tenured within my political subdivision. It would be helpful to see regulations developed for Public Law 94-142 which specifically assign the responsibility of personnel development as it relates to full service requirement to teacher training institutions throughout the country as well.

Federal monies, under the full service requirement, must go according to the following priorities:

1. children not receiving an education at all
2. children receiving services but those services aren't adequate.

Now, not receiving an education at all doesn't mean not recieving a special education. Not receiving an education at all means children who are not in school, children who are at home, children who are in the back wards of institutions and have not even made it to the institutional educational program, and children who are receiving educational programs in the institution which do not meet minimum time requirements.

This section also requires the need for the development of specific procedures for parent and guardian consultation with the state and local education agency, and also a timetable for implementation of

the full service requirement with the outside limit being, at this point, 1980.

Also, under the full service requirement, as was indicated earlier, there is a Hold Back Provision. Many local education agencies are concerned about this very much. The Council of the Great City Schools composed of the 27 largest cities in the county, is particularly concerned about this because the law is going to require definition of new relationships between the state education agency and the local education agency. The state can hold back money:

1. When the local educational agency fails to comply with the requirements of the state plan. Interestingly enough, in a majority of states, most local education agencies do not participate in the development of the state plan.
2. The state may hold back money when the LEA is unable or unwilling to provide the full service requirement.
3. The state may hold back money when it determines that handicapped children can best be served by a regional or state center. And the concern grows here. In New York State, if your mommy wants you to get A's and you're getting C's, your mommy will tell you, "If you don't watch out, you're going to go to a B.O.C.E.S. Center." A B.O.C.E.S. Center is an intermediate unit for handicapped children which is apart from rather than a part of the local education agency. I tend to think that is a violation of the least restrictive doctrine; and it may, in fact, be an inconsistency with the legislation.

4. The state can hold back money if the LEA is adequately providing full service.

This latter hold back provision is very interesting. That means that if the local education agency has done its homework, raised its money, had spaghetti suppers, begged the United Fund, beat down the door to the Mayor's Office, and had the political punch to develop a sufficient budget to provide full service, then the state doesn't have to give it any money. It also means that if the local education agency had their revenue accountant read the statutory language, and if they deliberately did not provide full service, then they would be entitled to money. There are some major concerns within urban areas in regard to that provision of the Statute.

The fourth major topical component is Procedural Safeguards. Actually, procedural safeguards aren't very new. Procedural safeguards, (and we've all been involved in this matter at the pre-service level and at the practitioner level) as relating to the rights of parents such as prior notice, due process, access to records and so on, are actually not new with P.L. 94-142. This requirement was really a part of 93-380, and were contained within Section 615 of that Act. These procedures can be outlined very simply, because of all the aspects of this legislation most educators are probably most familiar with them:

1. parent review of records, all records
2. right of an independent evaluation by the parent upon the parent's request, also including the right of the parent's request for a re-evaluation
3. surrogate parent provision - the responsibility of the state agency or the local agency to establish criteria to

select appropriate surrogate parents who can protect the rights of the child if the child is a ward of the state

4. written prior notice and parental consent, prior to evaluation for placement and prior to placement, prior to change in placement, prior to denial of placement
5. communication with the parent in regard to the due process requirements in the native language of the home
6. specific complaint, due process, and hearing procedures, including the responsibility to inform the parents of their right to complain before they complain, including formal procedures involving impartial hearing officers at the local and the state level, and including specific information on how to seek redress through civil action if, in fact, the parent is not satisfied with the redress establish through the hearing procedure.

A possible assumption under these procedures is that the parent is the advocate and is always capable of protecting the rights of the handicapped child, and the education agency is the adversary and does damage to the handicapped child. The question in regard to the current development of procedural safeguards within Public Law 94-142, and the major criticism of the regulations proposed to date relates to the question: "Is an adequate degree of protection provided the handicapped child if procedural safeguards are defined particularly with respect to the rights of parents and not with respect to the appropriate child advocacy role of the direct provider of service, the local education agency?"

Topical component number five is Administration and Evaluation. Now, procedural safeguards (as one interprets them within a school system, or as they are interpreted by a special education director) are really administrative procedures. The legal profession cannot effectively protect the rights of all handicapped children. Parents cannot effectively protect the rights of all handicapped children. A local education agency, with the legal basis, the legal assistance and the legal support, in dialogue, not litigation, with the parent, stands the best chance of effectively protecting the rights of all handicapped children.

Thus, these procedural safeguards must not only be interpreted in terms of the rights of parents, with the LEA and the SEA in an adversary role, but they must also be interpreted as specific administrative procedures which appear in the regulations developed by the Bureau of Education for the Handicapped and which can be monitored administratively and statistically for groups and classes of children. There will never be enough money, there will never be enough man-hours, there will never be enough time, and there will never be enough expertise to monitor this provision on a child-by-child or a parent-by-parent basis.

Under Administration and Evaluation, the first requirement is the child count, as was mentioned earlier. The second requirement is that BEH, under the legislation, must collect and verify this data. The third requirement is that BEH must provide research and development through grants to states so that child count requirements, particularly in regard to those handicapped children who are undetected, will be in compliance with the provision of the law. BEH is also responsible to report to the Congress directly on the progress it has made.

BEH is also responsible to ensure that all agencies receiving monies under the legislation develop procedures themselves to employ handicapped individuals within their agencies, and that positive evidence must be provided and will be required by these agencies regarding the employment of handicapped individuals.

BEH is also repsonsible, through commissioner's discretionary money, to provide incentive grants for the removal of architectural barriers; and is also responsible, through commissioner's discretionary money, to provide media and materials, particularly as they relate to development of the individual educational plan required by the Statute to be developed for each identified handicapped child.

Typical component number six is the Individual Evaluation Program. Again, a quote directly from the Statute:

> The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local education agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents, or guardian of such child, and, whenever appropriate, such child, which statement shall include (a) a statement of the present levels of educational performance of such child, (b) a statement of annual goals, including short-term instructional objectives, (c) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (d) the projected date for initiation and anticipated duration of such services, and (e) appropriate objective criteria and evaluation procedures, and schedules for determining, on at least an anuual basis, whether instructional objectives are being achieved.

Just about everyone is scared to death of that provision, particularly with reference to what it will mean in terms of cost, in terms of accountability, or in terms of man-hours, to the extent that we may have, in fact, ignored perhaps the more significant requirements as they relate

to administrative procedures directly related to the Doctrine of the Least Restrictive Alternative. My concerns regarding the individualized education program are (1) that staff development must occur first, and that (2) we may end up with something that is mostly a paper compliance, rather than real compliance.

One of the problems we have yet not faced up to is that the primary problem handicapped children have in common is general education itself.

MAJOR CONCERNS

The third section of this article includes a listing and a brief explanation of certain areas of concern within provisions of the Statute. These areas of concern are as follows:

1. The twelve percent ceiling and the two percent ceiling with respect to total handicapped identified and total learning disabled identified
2. Comparability of state and local fiscal procedures
3. SEA - LEA - University collaboration regarding professional development
4. Procedural safeguards as administrative procedures
5. Differential requirements of programming, state-local level, and rural-urban environments
6. Hold back provisions
7. Guidelines for administrative procedures
8. The direct provider of services in a child advocacy role
9. Compatible diagnostic procedures across the medical and emotional communities
10. Responsibility of state and local education agencies for the provision of services for severely and profoundly handicapped children and for the process of deinstitutionalization.

I will briefly outline specific areas of concern as they relate to each of the ten items I have presented.

1. Twelve Percent Ceiling - Two Percent Ceiling

The twelve percent ceiling established with respect to the total number of handicapped children effectively "places a cap" on the reported incidence of exceptionality as eligible for funds, and will effectively prevent the identification of children with learning needs as mildly handicapped to the exclusion of the severely handicapped, but does not take into consideration the validity of a higher incidence of handicapping conditions within impacted urban environments. The adequacy of health care, nutrition, incidence of lead poisoning, and the debilitating effects of poverty, cultural deprivation, and community instability with urban environments can and does produce a higher incidence of definitive handicapping conditions than twelve percent of the total school-age population.

Similarly, the two percent ceiling with respect to total learning disabled students identified is not compatible with the higher incidence within this area of exceptionality also found in city school systems. It is also possible that this two percent ceiling will result in more restrictive evaluation and/or labelling of urban chidren, including minority group children, as mildly retarded rather than learning disabled, since there is no compatible two percent ceiling on the identification of children within this area of exceptionality.

2. State and Local Fiscal Procedures

Notwithstanding the "Hold Harmless" provision of P.L. 94-142, state and local fiscal procedures can effectively drain off funds earmarked to provide direct service for populations of handicapped children previously served or inadequately served. This can be done in a number of ways, including but not limited to a charge for administrative overhead, charging of existing ancillary services already expended by the school system, and/or the delineation of charge routines that prorate the salaries of regular school administrators, vocational teachers, and music, art and physical education teachers so that special education "pays for its share" of the basic service provided for all children. It is critically important the regulations regarding Federal fiscal procedures be specifically designed to prevent the development of state and local fiscal procedures which might effectively drain off funds to pay for existing related services in violation of the spirit of the Hold Harmless provision.

3. SEA - LEA - University Collaboration

As was indicated earlier in this article strong consideration should be given to the development of guidelines and/or regulations pursuant to Part D, EHA, to ensure that handicapped funds provided to teacher-training institutions are used, at least in part, to specifically impact on the level of instruction for handicapped children in local education agencies, pursuant to the requirements for the individual education plan within P.L. 94-142.

4. Procedural Safeguards as Administrative Procedures

This concern has been covered in depth in the discussion of procedural safeguards in the second section of this article. Administrative procedures appear to be strongly indicated, particularly in the areas of the Doctrine of Least Restrictive Services, the percentage of handicapped children attending special school programs, the matter of race and sex equality, and evaluation and placement of all handicapped children.

It is naive to assume that the legal rights of handicapped children can be guaranteed without specific guidelines which enfore or permit the state and local education agencies to act in a child advocacy role, and to also develop administrative procedures that are specifically designed with reference to the Doctrine of Least Restrictive Services. This includes placement in regular educational environments, nondiscriminatory testing, evaluation in the native language or mode of communication, and multiple criteria for evaluating and determining placement.

5. Rural-Urban, State-Local

While a higher incidence of exceptionality can and does occur within urban environments, a higher per pupil cost for educating handicapped children can and does occur in rural environments because of the fewer numbers of children served and the distance and cost of transportation necessary to provide service. Because of political and expedient exigencies

that exist at the state level in regard to Federal legal mandates of any nature and because of the resistance that can and does occur within the local education agency with respect to serving severely handicapped children, it is distinctly possible that the Doctrine of Least Restrictive Services, as it applies to deinstitutionalization, will be violated in the implementation of the law. It is desirable to at least state as a matter of Federal record that potential problems within this area will be studied to ensure uniform compliance in regard to the process of deinstitutionalization and in regard to programmatic regulations of Sections 612 and 615.

6. Hold Back Provisions

Clearly, the provision which allows a state education agency to hold back monies from local education agencies who are providing adequate service is discriminatory against those agencies, and allows a possible flagrant abuse at the local level, i.e., deliberately not allocating funds for special education services in lieu of increasing revenue entitlement under Public Law 94-142. The regulations in regard to this provision must clearly prevent this possibility and establish a procedure which does not penalize the local education agency for providing minimum full service prior to the availability of funds under the law.

7. Guidelines for Administrative Procedures

Guidelines for administrative procedures can and should be developed regarding screening and placement decisions, special and regular school placements, and special and

regular class placements, to prevent tracking, to prevent discriminatory testing, and to prevent other violations of the spirit and intent of the Doctrine of Least Restrictive Services. The legal precedent in regard to "mainstreaming" is clearly drawn. As with desegregation and the thirty year crisis of implementing Brown versus Board of Education, the more we do now, the less we will have to do later.

8. Agency Child Advocacy

Many local education agencies, as the direct providers of service for the majority of handicapped children served across the country, are emerging in a child advocacy role that has significant implications for the education of the handicapped and for the individualization of instruction for children in general. Regulations and procedures which tend to create and foster an adversary role between the school system and the parent, the school system and the state, and the school system and the legal profession, without reinforcement of the child advocacy role of the school system, will result in further denial of the civil rights of the handicapped and a paper compliance with the requirements of P.L. 94-142. It is essential that regualtions be developed to at least encourage procedures which place the direct provider of service, particularly the local education agency, in a child advocacy posture.

9. Medical-Educational Communities

It will certainly be impossible to provide appropriate evaluation in the child's mode of communication if, in fact, the mode of communication between medical and educational communities is incompatible. There is a distinct difference between medical diagnosis and educational diagnosis. Terms such as hyperactivity, retardation, and minimal brain dysfunction have totally different functional definitions when used by doctors and when used by teachers. Restrictive in themselves, when not appropriately understood by teachers within schools, the language of instruction becomes the language of pathology, effectively pre-determining the child's adaptation or performance, resulting in a more restrictive instruction and design for services. If not appropriate for inclusion within regulation, it is critical that the Bureau of Education for the Handicapped recognize the need for development of compatible diagnostic procedures and operational definitions of handicapping conditions and dysfunctional learning behaviors across the medical and educational communities.

10. Deinstitutionalization

I am going to make a number of statements regarding this item which clearly describe my position and the importance of this process as it relates to the Doctrine of Least Restrictive Services.

a. The placement of institutionalized severely and profoundly handicapped children in public day school programs is critical to the process of deinstitutionalization, and to the continuum of services for all handicapped children in schools; it established the baseline for the least restrictive process.

b. Severely and profoundly handicapped children represent a diverse and heterogenous population of children who are often institutionalized for social and cultural reasons without a direct relationship to the severity of the handicap of their specific educational needs.

c. The behavior of a severely or profoundly handicapped child in an institution is institutionalized and/or dehumanized behavior. It quite often changes significantly upon entrance in a public day school program. This is not an indictment of the educational program at institutions, but rather an indication of the significant effect of the day school norm vs. institutional norm upon responsibility and expectation for the child's behavior.

d. An educational program for a severely and profoundly handicapped child, when conducted in a residential institution even though a public day school placement is possible and available, is not an appropriate educational program, and is a denial of the civil rights of that child, regardless of the alleged quality of the program.

e. The ability of the public school system to provide appropriate educational programs for severely and profoundly

handicapped children is primarily based on attitudinal variables and willingness rather than ability. Many already know how to change diapers, to teach children how to feed themselves, and to teach children how to indicate their toilet needs; we just never thought of it as education before; and we won't "learn" unless the norm is there to help us.

If the process of deinstitutionalization is not specifically designed pursuant to the Doctrine of Least Restrictive Services contained within P.L. 94-142, a major significance aspect of this legislation will be lost.

In summary, the rights of the handicapped as a distinct minority group are just beginning to be recognized. May I suggest that Brown versus the Board of Education was decided by the Supreme Court in 1954. Over twenty years later, substantive political and community crisis occurred in at least twenty American cities regarding its implementation. In my opinion, the Federal government cannot effectively mandate civil rights legislation for administrative compliance at the state and local level without designing mandatory or permissive procedures to ensure that state and locally derived administrative norms will themselves set in motion the procedures to meet the civil rights of any minority group. I believe this to be particularly true for that population of citizens within this free society who are identified as handicapped.

CONTRIBUTOR BIOGRAPHICAL SKETCHES

Robert L. Burgdorf, Jr. has been working at the University of Maryland Law School as Director of Legal Research for the past year. Currently, Bob is preparing a course book, entitled Legal Rights of Handicapped People. Also, he is engaged in assisting staff in legal research and strategy matters, as well as preparing comments on Federal legislation and regulations. Before assuming this position, Bob worked in South Bend, Indiana, for the National Center for Law and the Handicapped. He is currently co-chairperson of The Committee on the Mentally Retarded, Family Law Section, of the American Bar Association. Bob graduated from the University of Notre Dame Law School in 1973.

Iris Butler has been a consulting clinical psychologist for the Minneapolis School System, as well as conducting her own private practice for the last four years. In addition, she has also been teaching psychology at St. Catherine's College in St. Paul for the past two years. She was employed by the Minneapolis Public Schools for three years before assuming her private practice. Dr. Butler received her Doctorate from the University of Washington in 1973.

Jerry C. Gross has been Director of the LaGrange Area Department of Special Education for the past two years. He is responsible for directing thirteen elementary school districts and three high school districts, which make up the LaGrange Area Special Education Cooperative. Prior to this position, Jerry worked for the Minneapolis Public Schools Special Education Department for five years as Assistant Director for Program Services, and participated as co-director in the Annual National Invitational Conferences on Special Education Leadership. Jerry complete his Doctorate in 1969 from Southern Illinois University.

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Richard A. Rossmiller currently serves as Director of the Research and Development Center at the University of Wisconsin at Madison. He is also Professor of Educational Administration at the University. Dr. Rossmiller served as Finance Specialist for the three-year National Educational Finance Project, the first comprehensive study of school finance made since 1933. As a result of his work with that project, he has published "Dimensions of Need for Educational Programs for Exceptional Children." He has worked closely with BEH in financial matters related to programs for the handicapped.

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